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No. 08

In The
Supreme Court of the United States

APP INTERNATIONAL FINANCE COMPANY, B.V.; P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY; ASIA PULP & PAPER COMPANY LTD.; INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V.; AND P.T. INDAH KIAT PULP & PAPER CORPORATION,
Petitioners,

v.

GRYPHON DOMESTIC VI, LLC, ET AL.,
Respondents.

On Petition For Writ of Certiorari To The New York State Supreme Court, Appellate Division, First Judicial Department

PETITION FOR WRITT OF CERTIORARI

KENNETH R. PUHALA
BENJAMIN P. DEUTSCH
JOEL MCHUGH
NILAM A. SANGHVI
SCHNADER HARRISON SEGAL & LEWIS LLP
140 Broadway, Suite 3100
New York, NY 10005
(212) 973-8140

TIMOTHY K. LEWIS
Counsel of Record
DEENA JO SCHNEIDER
STEPHEN A. FOGDALL
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market St., Suite 3600
Philadelphia, PA 19103
(215) 751-2166

Attorneys for Petitioners

QUESTIONS PRESENTED

1. Whether the New York appellate court's decisions violated fundamental constitutional limitations on state power in

(a) ordering the turnover in New York and other restraints of judgment debtors' assets outside the State's geographical boundaries without regard to the territorial limits on its jurisdiction imposed by the Constitution, especially the Due Process Clause and the Full Faith and Credit Clause, and

(b) deviating from settled principles of international comity by affirming and enforcing a judgment contrary to statutes and judicial decisions of the Republic of Indonesia that required contrary rulings, faulting petitioners for exercising their contractual right to file suit in Indonesia, and summarily condemning the entire Indonesian court system as "corrupt" on the basis of hearsay.

2. Whether the New York appellate court's decision in favor of plaintiffs despite their conceded failure to comply with the requirements of the governing indentures and notes abrogated the protections established by the Trust Indenture Act, 15 U.S.C. §§ 77aaa-bbbb, and the uniformity of law that statute was intended to create.

PARTIES TO THE PROCEEDING

Petitioners APP International Finance Company, B.V.; P.T. Lontar Papyrus Pulp & Paper Industry; Asia Pulp & Paper Company Ltd.; Indah Kiat International Finance Company B.V.; and P.T. Indah Kiat Pulp & Paper Corporation were the defendants below and the appellants in the summary judgment decisions of which review is sought and the respondents/cross-appellants in the enforcement decision of which review is sought.

Respondents are Gryphon Domestic VI, LLC; OCM Opportunities Fund II, L.P.; OCM Opportunities Fund III, L.P.; Columbia/HCA Master Retirement Trust; Gramercy Emerging Markets Fund; and Warner Mansion Fund. These parties were the plaintiffs below and the respondents in the summary judgment decisions of which review is sought and the appellants/cross-respondents in the enforcement decision of which review is sought, except for Warner Mansion Fund, which has not participated in this litigation since acquiring the interest of General Electric Credit Corporation in June 2004.

CORPORATE DISCLOSURE STATEMENT

Petitioners' parent corporations are:

APP International Finance Company, B.V.:
Asia Pulp & Paper Company, Ltd.

P.T. Lontar Papyrus Pulp & Paper Industry:
PT Pindo Deli Pulp and Paper Mills (direct)
and PT Purinusa Ekapersada (indirect)

Asia Pulp & Paper Company Ltd.:
None

Indah Kiat International Finance Company B.V.:
PT Indah Kiat Pulp & Paper Tbk
(Corporation)

P.T. Indah Kiat Pulp & Paper Corporation:
PT Purinusa Ekapersada

Other than PT Indah Kiat Pulp & Paper Tbk, the parent company of petitioner Indah Kiat International Finance Company B.V., there are no publicly held companies owning 10% or more of the stock of any petitioner.

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TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF AUTHORITIES viii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT 2

REASONS FOR GRANTING THE PETITION 13

I. The Enforcement Decision And Final Decision Violate Basic Constitutional Limits On State Power By Asserting Control Over Property Outside New York And Denying Comity To Legislative And Judicial Acts Of Indonesia 13

A. The Enforcement Decision Conflicts With This Court's Longstanding Law Imposing Territorial Limits On State Court Power 15

B. The Enforcement Decision And Final Decision Deviate From Established Principles Of International Comity In Refusing To Recognize Indonesian Law And Judgments 22

II. The Initial Decision And Final Decision In Favor Of Plaintiffs Despite Their Admitted Failure To Comply With The Terms Of The Notes and Indentures Are Inconsistent With The Federal Trust Indenture Act And Settled Precedent 28

CONCLUSION 34

APPENDIX A

Final Summary Judgment Decision and Order of the N.Y. Appellate Division, First Department (Nov. 13, 2007) 1a

APPENDIX B

Enforcement Decision and Order of the N.Y. Appellate Division, First Department (Apr. 17, 2007) 4a

APPENDIX C

Order of the N.Y. Appellate Division, First Department, Denying Reargument of or Leave To Appeal from Enforcement Decision (Oct. 16, 2007) 30a

APPENDIX D

Initial Summary Judgment Decision and Order of the N.Y. Appellate Division, First Department (May 17, 2005) 32a

APPENDIX E

Order of the N.Y. Court of Appeals Denying Leave To Appeal (Mar. 20, 2008) 37a

APPENDIX F

Final Summary Judgment Decision of the N.Y. Supreme Court, Trial Division (Dec. 8, 2005) ... 39a

APPENDIX G

Superseding Order of the N.Y. Supreme Court, Trial Division, Regarding Final Summary Judgment Decision (Feb. 21, 2006) 43a

APPENDIX H

Final Summary Judgment of N.Y. Supreme Court, Trial Division (Feb. 24, 2006) 55a

APPENDIX I

Enforcement Decision of the N.Y. Supreme Court, Trial Division (May 23, 2005) 70a

APPENDIX J

Decision of the N.Y. Supreme Court, Trial Division, Vacating Injunction Against Transfer of Assets into Indonesia (Mar. 16, 2006) 85a

APPENDIX K

Order of the N.Y. Supreme Court, Trial Division, Regarding Enforcement Decision (Aug. 23, 2005) 90a

APPENDIX L

Initial Summary Judgment Decision of the N.Y. Supreme Court, Trial Division (Oct. 20, 2003) 96a

APPENDIX M

Revised Order of the N.Y. Supreme Court, Trial Division, Regarding Initial Summary Judgment Decision (Mar. 18, 2004) 100a

APPENDIX N

Initial Summary Judgment of the N.Y. Supreme Court, Trial Division (Apr. 13, 2004, as modified June 15, 2005) 114a

APPENDIX O

Decision of the N.Y. Supreme Court, Trial Division, Denying Preliminary Injunction Regarding Indonesian Litigation (Feb. 9, 2004) 139a

APPENDIX P

U.S. Const. art. IV, § 1 ..... 149a

U.S. Const. amend. XIV, § 1 ..... 149a

Trust Indenture Act § 315, 15 U.S.C. § 77*ooo* 150a

N.Y. C.P.L.R. § 5222(a)-(b) 154a

N.Y. C.P.L.R. § 5225 ..... 157a

TABLE OF AUTHORITIES

Page(s)

CASES

Baker v. Gen. Motors Corp.,
522 U.S. 222 (1998) 16

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398 (1964) 13, 14

Bhatnagar v. Surrendra Overseas, Ltd.,
52 F.3d 1220 (3d Cir. 1995)..... 26

Bluebird Partners, L.P. v. First Fid. Bank, N.A., 85 F.3d 970 (2d Cir. 1996) 28

BMW of N. Am., Inc. v. Gore,
517 U.S. 559 (1996) 18

Broad v. Rockwell Int'l Corp.,
642 F.2d 929 (5th Cir. 1981) 34

Caplan v. Unimax Holdings Corp.,
591 N.Y.S.2d 28 (App. Div. 1st Dep't 1992) 32

Clark v. Williard, 294 U.S. 211 (1935)..... 17, 20

Compagnie des Bauxites de Guinea v. Ins. Co. of N. Am., 651 F.2d 877 (3d Cir. 1981), *aff'd sub nom. Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinea*, 456 U.S. 694 (1982) 25

Corporacion Tim, S.A. v. Schumacher,
418 F. Supp. 2d 529 (S.D.N.Y.), *aff'd*, 223 Fed. Appx. 37 (2d Cir. 2006) 26

Daewoo Motor Am., Inc. v. Gen. Motors Corp., 459 F.3d 1249 (11th Cir. 2006) 24

Edgar v. MITE Corp., 457 U.S. 624 (1982) 18

Feder v. Union Carbide Corp., 530 N.Y.S.2d 165 (App. Div. 2d Dep't 1988) 33

Feldbaum v. McCrory Corp., No. 12006, 1992 Del. Ch. LEXIS 113 (Del. Ch. June 1, 1992) 32, 33

First Nat'l City Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972) 27

Gonzales v. P.T. Pelangi Niagra Mitra Int'l, 196 F. Supp. 2d 482 (S.D. Tex. 2002) 26

Green v. Van Buskirk, 72 U.S. 307 (1867) 13, 17

Hilton v. Guyot, 159 U.S. 113 (1895).....22, 23, 24, 25

In re Enercons Virginia, Inc., 812 F.2d 1469 (4th Cir. 1987) 23

Lockman Found. v. Evangelical Alliance Mission, 930 F.2d 764 (9th Cir. 1991) 26

M'Elmoyle v. Cohen, 38 U.S. 312 (1839) 15, 16, 20

MacKay Shields LLC v. Sea Containers, Ltd., 751 N.Y.S.2d 485 (App. Div. 1st Dep't 2002) 32

McMahan & Co. v. Wherehouse Entm't, Inc., 65 F.3d 1044 (2d Cir. 1995) 33

Miller v. Doniger, 814 N.Y.S.2d 141 (App. Div. 1st Dep't), *appeal denied*, 2006 N.Y. App. Div. LEXIS 12572 (2006) 15

Monegasque de Reassurances S.A.M. v. Nak Naftogaz of Ukraine, 311 F.3d 488 (2d Cir. 2002) 26

Motorola Credit Corp. v. Uzan, 388 F.3d 39 (2d Cir. 2004) 24

New York Life Ins. Co. v. Head, 234 U.S. 149 (1914) 13, 18, 19, 21

Oetjen v. Cent. Leather Co., 246 U.S. 297 (1918) 27

Peak Partners, LP v. Republic Bank, 191 Fed. Appx. 118 (3d Cir. 2006) 32, 33

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) 19, 21

Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197 (1958) 24, 25

Springwell Navigation Corp. v. Sanluis CorporaciOn, S.A., 849 N.Y.S.2d 34 (App. Div. 1st Dep't 2007) 32

Starbare II Partners, L.P. v. Sloan, 629 N.Y.S.2d 23 (App. Div. 1st Dep't 1995) 15

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) 13, 18

Sung Hwan Co. v. Rite Aid Corp., 7 N.Y.3d 78 (2006) 23

Thompson v. Whitman, 85 U.S. 457 (1874) 15

United States v. Kimbell Foods, Inc.,
440 U.S. 715 (1979) 20

United States ex rel. Saroop v. Garcia,
109 F.3d 165 (3d Cir. 1997) 23

Wong v. Tenneco, Inc.,
702 P.2d 570 (Cal. 1985) 24

Yahoo! Inc. v. La Ligue Contre Le Racisme,
433 F.3d 1199 (9th Cir.) (en banc) (per curiam), *cert. denied*, 547 U.S. 1163 (2006) .. 22, 23

Zeffiro v. First Pa. Banking & Trust Co.,
623 F.2d 290 (3d Cir. 1980) 29

CONSTITUTIONAL PROVISIONS & STATUTES

United States Constitution:

Art. IV, § 1 ..... 2, 3, 19

Amend. XIV, § 1 ..... 2, 3, 18

Trust Indenture Act:

15 U.S.C. § 77bbb 29

15 U.S.C. § 77*lll* 31

15 U.S.C. § 77*ooo* 2, 30

28 U.S.C. § 1257(a) 2

New York Civil Practice Law & Rules:

§ 5222(b) 2, 10

§ 5225(a) 2, 10, 15

§ 5501(a) 2

§ 5602(a) 2

Cal. Civ. Proc. Code § 704.040 19

42 Pa. C.S. § 8124(c)(7) 19

OTHER AUTHORITIES

American Bar Foundation, Commentaries on Indentures (1971) 31, 32, 33

Restatement (Second) of Conflict of Laws § 100 (1971) 16

Restatement (Second) of Judgments § 8 (1982) 16

Unif. Enforcement of Judgments Act § 2 (revised 1964), 13 U.L.A. 163 (2002) 16

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully seek this Court's review of three judgments of the First Judicial Department of the Appellate Division of the New York State Supreme Court (the "First Department").

OPINIONS BELOW

1. The First Department's final Decision and Order affirming summary judgment against petitioners (the "Final Decision") (App. A, 1a-3a) is reported at 848 N.Y.S.2d 612. The trial court's final summary decision (App. F, 39a-42a) is unreported.

2. The First Department's Decision and Order requiring the turnover in New York and other restraints on petitioners' worldwide assets (the "Enforcement Decision") (App. B, 4a-29a) is reported at 836 N.Y.S.2d 4. The trial court's enforcement decision (App. I, 70a-84a) and modification of that decision (App. J, 85a-89a) are unreported.

3. The First Department's initial summary judgment Decision and Order (the "Initial Decision") (App. D, 32a-36a) is reported at 795 N.Y.S.2d 43. The trial court's initial summary judgment decision (App. L, 96a-99a) is unreported.

JURISDICTION

The First Department entered the Final Decision on November 13, 2007, the Enforcement Decision on April 17, 2007, and the Initial Decision on May 17, 2005. The Enforcement Decision and the Initial Decision were non-final orders which became ripe for

discretionary review by the New York Court of Appeals upon entry of the Final Decision. *See* N.Y. C.P.L.R. §§ 5501(a)(1), 5602(a)(1)(ii). The Court of Appeals denied leave to appeal from these three decisions on March 20, 2008. App. E, 37a-38a. On June 9, 2008, Justice Ginsburg extended the time to file this petition to August 18, 2008. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of the Constitution, U.S. Const. amend. XIV, § 1 & art. IV, § 1; section 315 of the Trust Indenture Act of 1939, 15 U.S.C. § 77*ooo*; and two provisions of the New York Civil Practice Law and Rules, N.Y. C.P.L.R. §§ 5222(b) & 5225(a). Their text is set out at App. P, 149a-58a.

STATEMENT

This case presents important questions of federal law with international ramifications. It involves three series of Notes and Indentures issued and guaranteed by foreign petitioners under the Trust Indenture Act (the "TIA"), 15 U.S.C. §§ 77aaa-bbbb. Respondents, which claim but concededly cannot prove that they own beneficial interests in the Notes, failed to comply with the mandates of the TIA and the governing documents before bringing suit. The First Department nonetheless affirmed summary judgment in their favor and permitted them to enforce that judgment in New York against the

judgment debtors' worldwide assets – including assets in Indonesia, even though the highest court of that country has held the Indentures and Notes to be void and unenforceable under Indonesian law, and the risk of such a ruling was known from the outset.

The First Department's decisions contravene bedrock rules underlying our federalist form of government concerning the territorial limits on individual States' powers and conflict with numerous precedents of this Court and others applying those rules. The Enforcement Decision ordering the turnover in New York and other restraints on assets located outside the State is contrary to long-established judgment enforcement law as well as the Constitution, especially the Due Process and Full Faith and Credit Clauses. The Enforcement Decision and the Final Decision affirming summary judgment against petitioners likewise cannot be squared with fundamental principles of comity recognized by this Court, pursuant to which other courts respect the legislative and judicial acts of other jurisdictions. Review should be granted to correct these dramatic deviations from settled law.

The prospectuses for the Notes expressly disclosed that a United States judgment would not be enforceable and any claim would have to be relitigated *de novo* in Indonesia, where the petitioner operating companies and the collateral for the Notes are located, and that the transactions were structured in violation of Indonesian tax and securities laws. This notice underscores the lack of any valid basis on which the First Department could assert jurisdiction over assets in Indonesia or refuse

to recognize Indonesian law or the judgments of the Supreme Court of Indonesia that the Notes and Indentures violate that law and are unenforceable. It is particularly important that this Court correct this denial of comity because it implicates issues of national affairs, as Indonesia is an important ally of the United States.

The First Department's Initial Decision and Final Decision also run counter to the mandates of the TIA, which was designed to create a uniform law governing indentures for the benefit of all investors, trustees, and issuers. Respondents failed to provide the Trustee here the information necessary for it to fulfill its obligations under the TIA and to establish compliance with conditions precedent to this suit. They further failed to prove their ownership of the Notes and admit they cannot do so in the manner required by the governing documents. The First Department's affirmance of summary judgment for respondents despite these failures conflicts with other precedents as well as the TIA itself. Action by this Court is needed to restore clarity and predictability to this important area of law.

The First Department's errors in this case are so egregious and create such dangerous precedent that petitioners respectfully suggest that summary reversal by this Court is appropriate.

A. Facts Concerning the Notes and Indentures

In the mid-1990s petitioners (collectively "APP") entered into three financing transactions involving the issuance and guaranty of $800 million of Notes governed by trust Indentures. The Notes were

issued by Dutch companies ("APP Finance" and "Indah Kiat Finance") that have no offices or business. App. 75a, 141a. These companies then lent the proceeds to the true borrowers and sources of repayment, the Indonesian operating companies that guaranteed the Notes ("Lontar Pulp & Paper" and "Indah Kiat Pulp & Paper"). App. 6a, 74a, 141a-42a.

The collateral securing the Notes consists of real property and equipment located in Indonesia and subject to agreements governed by Indonesian law and providing for an Indonesian forum. App. 6a, 140a, 142a; R. 3358-66, 3455.[1] No APP company is authorized to do business, does business, or owns property in New York. App. 75a. The only basis for this suit is APP's consent in the Indentures, which are governed by New York law, to courts in New York City as a non-exclusive forum for certain claims. App. 6a, 75a, 79a, 142a.

The prospectuses for the Notes explicitly informed investors that a New York or other foreign judgment "will not be enforceable by the courts of Indonesia," where the collateral and APP's other assets are, and that "[r]eexamination of the underlying claim *de novo* would be required . . . ." App. 142a-43a. In addition to listing legal issues that would be encountered in pursuing the collateral in Indonesia, R. 3477-83, 3624-28, the prospectuses disclosed that the transactions were deliberately structured to avoid Indonesian tax and securities laws. R. 3342-43, 3486-88, 3580-81, 3697-99.

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[1] "R." and "E.R." refer respectively to the records in the Final Summary Judgment and Enforcement Appeals.

Indonesian tax laws subject foreign lenders' interest income payments from Indonesian borrowers to a 20% withholding tax. R. 1584, 2684. If the lender is a company organized in the Netherlands, under a tax treaty the interest is subject to only a 10% withholding tax (Indonesia having once been a Dutch colony). R. 1584, 2691. The withholding tax was improperly reduced here because the Dutch companies that lent to the Indonesian borrowers were shell companies specially created for this purpose that first borrowed the money from non-Dutch entities (the holders of the Notes). R. 1571-72, 1584-86. Additionally, because the Notes were issued by Dutch companies rather than the Indonesian borrowers, no regulatory approval for the public offering was obtained from the Indonesian securities and exchange commission as required by Indonesian securities laws. R. 1584-86, 1592-93.

Each Indenture provides for only one or a few Global Notes, with other entities able to purchase beneficial interests from the Noteholders. R. 1565-66. The Trustee is required to keep a Register recording "all . . . changes in ownership," R. 562, 690, 800, which the Notes specify include "transfers . . . of beneficial interests," R. 659, 740, 850. Both the Indentures and the Notes underscore that "[t]he holding of Notes . . . shall be proved by the Register" and the registered owner is to be treated "as the absolute owner" for all purposes, including "receiving payment." R. 606, 659, 713, 740, 823, 850.

Respondents (collectively "Gryphon" or "plaintiffs"), which claim to own beneficial interests in the Notes, concede that they are not named in any

Register and "the sole registered holder" of the Notes is Cede & Co. as nominee for DTC. Brief for Plaintiffs-Respondents in Final Summary Judgment Appeal at 7. They appear to have acquired most of their purported interests after APP became unable to continue making payments, when the Notes had little or no value. R. 61-64, 1260-61, 1301-21.

All three Indentures contain substantially similar "no action clauses" or conditions precedent barring any suit by a Noteholder until 30 days after Noteholders representing 25% of the outstanding principal have "made written request upon the Trustee to institute . . . suit . . . in its own name." R. 592, 701, 811. The request may be made by an agent "duly appointed in writing," but only "become[s] effective when [the writing is] received by the Trustee." R. 605-06, 712-13, 822-23.

B. Initial Summary Judgment Proceedings

After paying hundreds of millions of dollars on the Notes, APP suffered financial reverses due to an Indonesian recession, currency depreciation, and decline in pulp and paper prices. R. 1566, 4442-43. In March 2001, Lontar Pulp & Paper, Indah Kiat Pulp & Paper, and related companies declared a "standstill" on the repayment of their debt, which totaled about $6 billion. R. 1566, 4442. After extensive negotiations with government and commercial creditors across the world, on October 30, 2003 Master Restructuring Agreements ("MRAs") were executed providing for the repayment of all principal with interest. R. 1566, 4443. The Indah Kiat Pulp & Paper MRA and two others became

effective on April 28, 2005, upon which participants began to receive payments on the new debt and were granted security interests. R. 1470-80, 1566, 4443-44. The Lontar Pulp & Paper MRA did not become effective, largely because of this litigation. R. 1566.

Rather than participating in the MRAs, Gryphon chose to pursue claims on the defaulted Notes and Indentures in New York – despite notice that the true borrowers were Indonesian, the financing transactions were structured to evade Indonesian law, and any judgment would not be enforceable in Indonesia where APP's assets were located. In November 2001, the Trustee, claiming to be acting at the request of sufficient Noteholders, accelerated the Notes and declared the principal due and payable. R. 892-98. On September 11, 2002, having previously requested the Trustee to sue, purported agents for beneficial owners of 25% of the Notes filed this action to collect principal and past due interest. App. 97a-98a. After the initial complaint was dismissed, an amended complaint was filed in the names of the purported owners of the Notes. App. 97a-98a.

Summary judgment was initially entered for Gryphon on April 13, 2004. App. 114a-38a. On May 17, 2005, the First Department issued its Initial Decision vacating the bulk of that judgment because plaintiffs had failed to prove their ownership of the Notes when the Trustee was requested to bring suit and the authority of one of their purported agents that made the request. App. 33a-35a. The judgment was affirmed as to one series of matured Notes on the grounds that the condition precedent "d[id] not

apply" and "sufficient evidence" of ownership was submitted as to them. App. 33a.

C. Enforcement Proceedings

Recognizing that a New York judgment could not determine the parties' rights as to assets in Indonesia, in November 2003 APP commenced litigation in that country against Gryphon and other parties. App. 8a, 140a. The New York trial court refused to preliminarily enjoin this litigation and specifically found that it "d[id] not constitute bad faith, fraud, or harassment" by APP because "plaintiffs knew that they could only enforce their rights to the Indonesian collateral by litigating there" and "re-litigation was a pre-disclosed risk of investment that [they] voluntarily accepted." App. 147a. The court further noted that the forum selection clauses in the Indentures were expressly non-exclusive. App. 146a.

The Indonesian litigation resulted in holdings in September 2004 that the financing transactions were designed to avoid Indonesian tax and securities laws through the use of Dutch shell companies, and the transactions and related agreements (including the Indentures and Notes) are therefore illegal, void, and unenforceable under the Indonesian Civil Code, a statute of general application. App. 8a, 143a-44a; *see* R. 1582-95, 1820, 2355-56. The Indonesian courts entered both declaratory judgments and injunctions "prohibit[ing] [Gryphon] from prosecuting any enforcement or payment lawsuit . . . ." App. 83a (internal quotation marks omitted). The judgments were affirmed on appeal, and one of them has been

affirmed by the Indonesian Supreme Court, the highest court in the country.[2]

In the interim, Gryphon initiated judgment enforcement proceedings in New York designed to reach APP's assets outside the State. After serving attorney-issued restraining notices under N.Y. C.P.L.R. § 5222(b), in October 2004 it sought a turnover order under N.Y. C.P.L.R. § 5225(a) directing APP to deliver all property covered by those notices, including overseas bank accounts and interests in overseas subsidiaries and related entities. App. 9a, 81a.

On May 23, 2005, in light of a decision of the First Department, the trial court held that its personal jurisdiction over the Indah Kiat defendants (the only ones still subject to judgment) empowered it to "order them to satisfy [the judgment] by delivering their property, regardless of its location." App. 77a. The court ordered the turnover of stock certificates for subsidiaries and affiliates that were currently "located outside of Indonesia," App. 83a-84a, explaining later that it imposed this limitation "in view of the [Indonesian] anti-suit injunctions," App. 87a. The court also enjoined these defendants "from transferring their assets into Indonesia," App. 84a, but vacated this order on March 13, 2006 on the ground that "New York courts cannot restrain transfers of property located outside of the state,"

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[2] Additionally, the Indonesian taxing authority has issued a Circular Letter confirming that the use of Dutch conduits violates the Netherlands/Indonesia tax treaty. R. 4366-69.

App. 88a. The court vacated the restraining notices for the same reason. App. 76a.

On cross-appeals, on April 17, 2007 the First Department issued its Enforcement Decision holding that the Indah Kiat defendants' out-of-state property was subject to both turnover and restraint based solely on the court's personal jurisdiction over them. App. 13a, 26a. The court further held that the turnover order should include property in Indonesia and ordered the reinstatement of the trial court's injunction prohibiting transfers of assets into that country. App. 24a-27a.

The First Department declined to give the Indonesian judgments comity based on its view that defendants had "deliberately courted [these] legal impediments" and on hearsay evidence of general "corruption" in the Indonesian legal system. App. 22a, 24a. The court specifically refused to defer to the trial court's record-based finding that APP had not acted in bad faith in instituting the Indonesian litigation and substituted its own unsupported contrary "find[ing]." App. 22a-23a.

D. Final Summary Judgment Proceedings

On remand from the First Department's Initial Decision, Gryphon moved again for summary judgment on the remaining Notes based on additional evidence of plaintiffs' beneficial ownership and their agent's authority when the Trustee was requested to bring suit. App. 40a-41a. APP cross-moved for summary judgment as to all the Notes on grounds of comity and illegality based on the Indonesian judgments and both Indonesian and New

York law (under which contracts that are illegal in the place of performance are unenforceable if the parties entered into them with a view to violating that law). App. 40a, 42a. APP also argued that plaintiffs were not registered Noteholders entitled to bring suit and that their ownership status and agents' authority were not established to the Trustee. App. 2a; *see* R. 1260-63, 1538-63.

On December 8, 2005, the trial court again granted summary judgment to Gryphon, stating that APP had "fail[ed] to raise any issue of fact" and its arguments were "largely [reassertions]" of previously rejected points. App. 42a. As to illegality, the only argument addressed, the court stated that it "ha[d] already ruled that Indonesian court rulings . . . do not affect this proceeding." App. 42a. In fact, the court had held that it had the power to order the turnover of assets in Indonesia, App. 77a, but had declined to do so "in view of the [Indonesian] anti-suit injunctions," App. 87a.

On November 13, 2007 the First Department issued its Final Decision affirming summary judgment in favor of Gryphon. App. 1a-3a. This decision merely reiterated that APP had acted "in bad faith" so as to defeat comity and stated (erroneously) that the Indentures do not require that a "request or demand by an agent on a noteholder's behalf be accompanied by written proof of agency . . . ." App. 2a. The court did not address APP's illegality argument or plaintiffs' concession in their appellate brief that they are not registered Noteholders.

REASONS FOR GRANTING THE PETITION

I. The Enforcement Decision And Final Decision Violate Basic Constitutional Limits On State Power By Asserting Control Over Property Outside New York And Denying Comity To Legislative And Judicial Acts Of Indonesia.

The First Department's Enforcement Decision and Final Decision are in conflict with fundamental limits on State power "upon the preservation of which the Government under the Constitution depends." *New York Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914). Because each State has "perfect jurisdiction over all property . . . within its territorial limits," *Green v. Van Buskirk*, 72 U.S. 307, 312 (1867), no State may assert control over property located in other jurisdictions. Thus, a State "may make its own reasoned judgment about what conduct is permitted or prescribed within its borders," *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003) (internal quotation marks omitted), but may not "sit in judgment on the acts" of another sovereign "done within its own territory," *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 416 (1964) (internal quotation marks omitted).

The decisions here cannot be reconciled with these constitutional restrictions in two respects:

First, the Enforcement Decision upheld and expanded the trial court's orders enforcing the judgment against property outside New York. As expanded, the turnover order requires the Indah Kiat defendants to deliver in New York millions of dollars

of assets having no connection to that State or even the United States – including not only ownership interests in subsidiaries and affiliates, but bank accounts in which Indah Kiat Pulp & Paper's MRA creditors have perfected security interests. The Enforcement Decision also reinstated restraints on the Indah Kiat defendants' assets outside New York that the trial court had removed, thereby again exceeding its territorial power.

Second, both the Enforcement Decision and the Final Decision disregard the Indonesian courts' judgments that the Notes and Indentures are illegal and unenforceable because they were structured in violation of Indonesian tax and securities laws. The First Department erroneously rejected the trial court's record-based finding that APP acted properly in exercising its contractual right to institute litigation in Indonesia, and then concluded (based on no competent evidence) that the results of that litigation are irrelevant because the Indonesian judicial system is supposedly "corrupt." In so ruling, the court ignored long-standing principles of comity owed to a co-equal sovereign – whether a foreign nation or another State – and improperly "s[a]t in judgment" on that sovereign's entire judiciary. *Sabbatino*, 376 U.S. at 416.

This Court should grant review to reaffirm the constitutional limits on State power and illuminate for other litigants and courts the law of judgment enforcement and international comity. At the very least, the decisions should be summarily reversed to correct the egregious errors below and restore certainty in these important areas.

A. The Enforcement Decision Conflicts With This Court's Longstanding Law Imposing Territorial Limits On State Court Power.

New York's turnover statute provides that a court "shall order" a judgment debtor "in possession or custody of money or other personal property in which he has an interest" to "pay the money . . . to the judgment creditor and . . . deliver any other personal property . . . to a designated sheriff." N.Y. C.P.L.R. § 5225(a). In its Enforcement Decision and two others, the First Department has held that this provision authorizes the turnover of money and property whether inside or outside New York.[3]

This holding is directly at odds with repeated declarations by this Court that State courts may not enforce their judgments beyond their borders:

- "[A State court judgment] does not carry with it, into another state, the efficacy of a judgment upon property or persons, to be enforced by execution." *M'Elmoyle v. Cohen*, 38 U.S. 312, 325 (1839).

- "No execution can issue upon such judgments without a new suit in the tribunals of other states." *Thompson v. Whitman*, 85 U.S. 457, 463 (1874).

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[3] *See Miller v. Doniger*, 814 N.Y.S.2d 141, 141 (App. Div. 1st Dep't), *appeal denied*, 2006 N.Y. App. Div. LEXIS 12572 (2006); *Starbare II Partners, L.P. v. Sloan*, 629 N.Y.S.2d 23, 23 (App. Div. 1st Dep't 1995).

- "Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the even-handed control of forum law." *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235 (1998).

In short, in order that a judgment have "force . . . in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit." *M'Elmoyle*, 38 U.S. at 325.[4]

Because of this basic territorial limitation on the reach of a State court judgment, virtually every State in the nation, including New York, has adopted some form of the Uniform Enforcement of Foreign Judgments Act, which requires that a properly authenticated foreign judgment filed in a court of a sister State be treated as a judgment of the sister State. *See* Unif. Enforcement of Foreign Judgments Act § 2 (revised 1964), 13 U.L.A. 163 (2002). The ubiquitous adoption of this statute would make little sense if States had sweeping extraterritorial power as the First Department has held. There would be no need to domesticate a judgment in another

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[4] *See also* Restatement (Second) of Judgments § 8 cmt. d (1982) ("[T]he judgment of one state is not immediately enforceable by executive action in a sister state. Instead, the judgment must first be made a judgment in the state where it is to be enforced."); Restatement (Second) of Conflict of Laws § 100 cmt. b (1971) ("[T]he method usually employed in this country for the enforcement of a foreign judgment for the payment of money is to bring a new action in the nature of a debt upon the judgment in the forum State and to obtain a new judgment there.")

jurisdiction if the court that entered the judgment could simply order the judgment debtor to bring all its property into that jurisdiction.

The First Department brushed aside this settled law on the ground that while it "would violate the sovereignty of another state if a New York sheriff tried to attach property" there, an extraterritorial turnover order is somehow permissible because it "merely directs a defendant, over whom the New York court has jurisdiction, to bring its own property into New York." App. 13a. The court likewise held that "a New York court can restrain transfers of property outside the state, so long as it has jurisdiction over the transferor." App. 26a.[5]

This illogical distinction ignores the fact that each State with "perfect jurisdiction over all property . . . within its territorial limits" will have its own laws and policies governing how judgments are to be enforced against that property. *Green*, 72 U.S. at 312; *see also Clark v. Williard*, 294 U.S. 211, 213 (1935) ("Every state has jurisdiction to determine for itself the liability of property within its territorial

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[5] In holding that extraterritorial restraints of property are proper, the First Department rejected the trial court's contrary rulings. *See* App. 88a-89a (vacating injunction prohibiting the Indah Kiat defendants from transferring property into Indonesia in part because "New York courts cannot restrain transfers of property located outside of the state"); App. 76a (vacating restraining notices issued by Gryphon's attorneys purportedly imposing a global freeze on transfers of defendants' assets because they "do not reach property in other jurisdictions").

limits to seizure and sale under the process of its courts."). The First Department would improperly displace all conflicting judgment enforcement laws and policies in favor of New York's.

No State can reach beyond its borders and usurp the power of another State without running afoul of the constraints upon its authority imposed by the Due Process Clause. As this Court established long ago, "a State may not consistently with the due process clause of the Fourteenth Amendment extend its authority beyond its legitimate jurisdiction . . . ." *Head*, 234 U.S. at 162.

In addition, our federalist system of government, which depends upon maintaining respect for each State's power within its own territory, would be severely undermined if a State were permitted to impose its legal preferences within the territory of a separate and co-equal sovereign. This Court has consistently reaffirmed the principle that a State's territorial boundaries mark the outer reaches of its power. *See, e.g.*, *Campbell*, 538 U.S. at 421 ("A State cannot punish a defendant for conduct that may have been lawful where it occurred."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996) ("[I]t follows from . . . principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing [defendants'] lawful conduct in other States."); *cf. Edgar v. MITE Corp.*, 457 U.S. 624, 643 (1982) (plurality opinion) ("[A]ny attempt [by a State] directly to assert extraterritorial jurisdiction over persons or property would offend sister States and

exceed the inherent limits of the State's power.") (internal quotation marks omitted).

The First Department's extraterritorial enforcement remedies also ignore limits imposed on State authority by the Full Faith and Credit Clause. *See Head*, 234 U.S. at 161 (explaining that the same considerations that underlie due process restrictions on the exertion of State authority also "lie[] at the foundation of the full faith and credit clause"). "[T]he Full Faith and Credit Clause require[s] the forum to respect the laws and judgments of other States . . . ." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 819 (1985). A turnover order or other restraint on property outside the State fails to respect the law of the State where the property is located.

Other States' exemptions of certain types of property from attachment would be effectively nullified if a New York court had the power to order a turnover of foreign assets. For example, California exempts artwork from attachment. Cal. Civ. Proc. Code § 704.040. Similarly, Pennsylvania protects the proceeds of an accident or disability insurance policy from attachment. 42 Pa. C.S. § 8124(c)(7). Because New York does not recognize these exemptions, under the Enforcement Decision a New York court could order a judgment debtor in California or Pennsylvania to deliver exempt assets in those States to satisfy a New York judgment, even though the judgment creditor could not reach those assets by domesticating the judgment in those States.

Turnover orders affecting extraterritorial assets also would interfere with the rights and expectations

of creditors by altering existing priorities, which are now determined under the law where the property is located. *See Clark*, 294 U.S. at 213; *M'Elmoyle*, 38 U.S. at 325. New York should not be permitted to change out-of-state and foreign creditors' rights to property brought into the State – especially when those creditors have no connection to New York. *See United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 739-40 (1979) (recognizing importance of creditor expectations when determining property rights and lien priorities and warning against judicial alteration of settled commercial practices).

The First Department dismissed such conflicts, concluding that they were "hypothetical" and "of the defendant judgment debtors' own making: a defendant simply could avoid any conflict by not subjecting him or herself to New York's jurisdiction." App. 14a. The court was mistaken on both counts.

To begin with, there is nothing "hypothetical" about these conflicts. Indonesian courts have definitively declared that the Indentures and Notes are illegal and unenforceable under Indonesian law and that Gryphon may not "prosecut[e] any enforcement or payment lawsuit . . . ." App. 83a. But the First Department's turnover order requires the Indah Kiat defendants to transfer substantial Indonesian assets to Gryphon, thus ***actually*** (not "hypothetical[ly]") projecting New York's judgment enforcement laws and policies into Indonesia.

Significantly, among the out-of-state property subject to the turnover order are bank accounts in which the Indah Kiat Pulp & Paper's MRA creditors

have a perfected security interest. The First Department erroneously concluded that "there is no legal reason why the plaintiffs' judgment must be subordinate to the MRA . . . ." App. 19a. But there ***is*** a legal reason: the New York court's turnover order "may not abrogate the rights of parties beyond its borders [the MRA creditors] having no relation to anything done or to be done within them." *Shutts*, 472 U.S. at 822 (internal quotation marks omitted); *see also Head*, 234 U.S. at 162.

These very real conflicts may not be dismissed as "of the defendant judgment debtors' own making." Under the traditional judgment enforcement regime that prevailed in this country until the First Department began to approve extraterritorial remedies, a foreign defendant that voluntarily subjected itself to the jurisdiction of another State's courts did so with the expectation that property in its home jurisdiction could only be reached by that jurisdiction's courts. This territorial limitation on judgment enforcement would have played a key role in the defendant's calculus whether to submit itself to jurisdiction in the other State.

In this case, both APP and all other parties had the firm expectation that New York courts would ***not*** be able to reach defendants' property in Indonesia. As the trial court specifically found – and the First Department ignored – the prospectuses for the Notes explicitly disclosed that the issuers and guarantors of the Notes were incorporated outside the United States, that APP's operating companies and the collateral for the Notes were located in Indonesia, and that if plaintiffs wanted to obtain property in

Indonesia to satisfy a New York judgment, they would have to re-litigate their claims *de novo* in that jurisdiction. App. 142a-43a. Thus, "re-litigation [in Indonesia] was a pre-disclosed risk of investment that the plaintiffs voluntarily accepted." App. 147a. The First Department's Enforcement Decision turns the parties' expectations on their heads.

This Court should grant review or summarily reverse to prevent New York courts from asserting control over property in other jurisdictions without regard for those jurisdictions' laws and policies. Such unprecedented and sweeping relief is inconsistent with the constitutional theory underlying our federalist government.

B. The Enforcement Decision And Final Decision Deviate From Established Principles Of International Comity In Refusing To Recognize Indonesian Law And Judgments.

This Court long ago established that the doctrine of international comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). Federal and state courts – including until now the courts of New York – routinely apply the *Hilton* principle generously, giving conclusive effect to the laws and judgments of foreign sovereigns absent a showing of fraud in their procurement or an offense

to domestic public policy. *See, e.g., Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1213-14 (9th Cir.) (en banc) (per curiam), *cert. denied*, 547 U.S. 1163 (2006); *United States ex rel. Saroop v. Garcia*, 109 F.3d 165, 169-70 (3d Cir. 1997); *In re Enercons Virginia, Inc.*, 812 F.2d 1469, 1473 (4th Cir. 1987); *Sung Hwan Co. v. Rite Aid Corp.*, 7 N.Y.3d 78, 82 (2006).

The First Department's refusal to follow the *Hilton* principle in this case not only conflicts with these decisions but is an affront to the Republic of Indonesia, an important ally of this country. There is no dispute that the Indentures and Notes violate Indonesian tax and securities laws. The Indonesian courts have so held and enjoined their enforcement, and the Indonesian taxing authority has confirmed that the use of Dutch conduits violates the Netherlands/Indonesia tax treaty.

There also is no dispute that the prospectuses expressly advised all parties that the Indentures and Notes were structured to avoid these laws, and that re-litigation *de novo* in Indonesia of any claims would be required to reach property there. The New York trial court refused to enjoin APP's litigation in Indonesia challenging the legality of the transactions under Indonesian law, finding that it "d[id] not constitute bad faith, fraud, or harassment" because Gryphon "knew" and "voluntarily accepted" the risk of re-litigation as part of the parties' contractual bargain. App. 144a, 147a. In its Enforcement Decision and Final Decision the First Department nonetheless chose to deny comity to the judgments that resulted from that Indonesian litigation and to

ignore the Indonesian tax and securities laws on which those judgments are based.

The court made no attempt to support its decision under a traditional *Hilton* analysis, such as with a finding that recognition of Indonesian law would be repugnant to domestic public policy. *See, e.g., Daewoo Motor Am., Inc. v. Gen. Motors Corp.*, 459 F.3d 1249, 1258 (11th Cir. 2006). Rather, it simply proceeded to enforce contracts that are illegal under the laws of Indonesia. This holding will create uncertainty in the international business community with regard to the enforcement of contracts and also puts the law of New York in direct conflict with that of other jurisdictions. *See, e.g., Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) ("Comity teaches that a contract . . . made with a view of violating the laws of another country, though not otherwise obnoxious to the law . . . of the forum . . . will not be enforced.") (ellipses in original) (internal quotation marks omitted).

The First Department offered only two justifications for its refusal to respect Indonesian law under the *Hilton* principle. First, it held that APP had "deliberately courted legal impediments" by procuring the foreign judgment. App. 22a (internal quotation marks omitted). The court adopted this novel rule from *Motorola Credit Corporation v. Uzan*, 388 F.3d 39 (2d Cir. 2004), where the Second Circuit opined that "orders of foreign courts are not entitled to comity if the litigants who procure them have 'deliberately courted legal impediments' to the enforcement of a federal court's orders." *Id.* at 60 (quoting *Societe Internationale Pour Participations*

Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 208-09 (1958)). Significantly, the issue before this Court in *Societe Internationale* was whether sanctions against a foreign party were properly imposed for deliberate noncompliance with a discovery order. *See* 357 U.S. at 208-09. The case did not even address international comity under *Hilton*, let alone suggest the analysis that was applied here.

The First Department's inquiry into APP's reasons for resorting to the Indonesian courts is untenable. Where the parties negotiate non-exclusive forum selection clauses expressly allowing foreign suits, the motive behind commencement of such a suit should play no role in assessing whether comity warrants recognition of the resulting judgment. This Court should grant review to disapprove the "deliberately courted impediments" standard adopted by the First Department and to remove any doubt as to the validity of contracts that permit parallel litigation in foreign forums.[6]

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[6] Indeed, courts refuse to enjoin parallel litigation in foreign courts even where the parties have not agreed (as the parties did here) that it would be permitted, and even where it is deemed "harassing and vexatious." *Compagnie des Bauxites de Guinea v. Ins. Co. of N. Am.*, 651 F.2d 877, 887 (3d Cir. 1981) (concluding that such "factors alone d[o] not justify the breach of comity among the courts of separate sovereignties"), *aff'd sub nom. Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinea*, 456 U.S. 694 (1982). If parallel litigation is permitted in these circumstances, then a "deliberately courted impediments" standard cannot apply where foreign litigation is expressly permitted by contract.

The First Department's second justification for refusing comity was its purported "find[ing]" that the entire Indonesian judicial system – a multi-tiered system of trial and appellate courts serving a population of approximately 237 million people – is "corrupt[]" and produces judgments that are unworthy of recognition in an American court. App. 24a. The court based this determination not on an evidentiary record developed after a hearing, but rather on a small selection of newspaper articles and hearsay materials that Gryphon submitted. However, numerous courts have recognized that a finding of corruption in a foreign judicial system must be based on admissible record evidence, including expert testimony. *See, e.g., Bhatnagar v. Surrendra Overseas, Ltd.*, 52 F.3d 1220, 1230 n.8 (3d Cir. 1995); *Gonzales v. P.T. Pelangi Niagra Mitra Int'l*, 196 F. Supp. 2d 482, 488 & n.5 (S.D. Tex. 2002); *see also Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir. 1991).

Courts (other than the First Department) "have been reluctant to find foreign courts 'corrupt' or 'biased.'" *Monegasque de Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 499 (2d Cir. 2002); *see also Corporacion Tim, S.A. v. Schumacher*, 418 F. Supp. 2d 529, 533 (S.D.N.Y.) ("Such denunciations not only run counter to principles of international comity and could retard efforts to reform foreign tribunals, but also risk imposing on our judicial system the burden of serving as courtroom to the world for the adjudication of essentially foreign disputes with only nominal connections with the United States."), *aff'd*, 223 Fed. Appx. 37 (2d Cir. 2006). The Republic of Indonesia is

a democratic society, significant United States trading partner, and crucial ally in the war against terrorism. The validity of its judicial system should not be impugned by a court of this country based solely on hearsay.

Indeed, if newspaper articles are to be the determinants of comity, United States courts would be asked to refuse to recognize judgments rendered by scores of nations around the globe – and foreign courts might also rely upon similarly flimsy evidence to refuse comity to judgments of our courts. As this Court has recognized, "[t]o permit the validity of the acts of one sovereign State to be reexamined and perhaps condemned by the courts of another would very certainly 'imperil the amicable relations between governments and vex the peace of nations.'" *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 304 (1918); *see also First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 769 (1972) ("[O]n occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of the Nation's foreign policy.").

The First Department's attempt to nullify Indonesia's legislative and judicial acts in response to clear violations of its tax and securities laws shows an unwarranted disrespect for Indonesian sovereignty. This Court should grant review to correct this baseless condemnation of the Indonesian judiciary and to clarify the grounds upon which a court may denounce a foreign legal system as "corrupt."

II. The Initial Decision And Final Decision In Favor Of Plaintiffs Despite Their Admitted Failure To Comply With The Terms Of The Notes And Indentures Are Inconsistent With The Federal Trust Indenture Act And Settled Precedent.

The First Department twice affirmed summary judgment for Gryphon even though plaintiffs failed to establish their ownership of the Notes (which they have conceded they cannot do as required by the governing documents) or to provide the Trustee information needed to comply with the TIA and conditions precedent to this suit. The Final Decision and the Initial Decision warrant review by this Court – if not summary reversal – on two grounds. First, the decisions undermine the TIA by condoning behavior by purported beneficial owners of the Notes that prevented the Trustee from fulfilling its statutory obligations. Second, by ignoring provisions of Indentures and Notes structured to comply with the TIA, the First Department departed from consistent precedents strictly construing such provisions and destroyed the uniformity of law the statute was enacted to create.

Congress passed the TIA in recognition of the need for standard regulation to address abuses by indenture trustees. *See, e.g., Bluebird Partners, L.P. v. First Fid. Bank, N.A.*, 85 F.3d 970, 974 (2d Cir. 1996) (discussing the legislative history of the statute and citing S. Rep. No. 248, at 3 (1939)). "[T]he Act sought to attack a national problem in a uniform way. Congress believed that the 'inadequacy (of indentures) present[ed] a national problem which

[could not] be dealt with effectively by the States ...." *Zeffiro v. First Pa. Banking & Trust Co.*, 623 F.2d 290, 299 (3d Cir. 1980) (quoting H.R. Rep. No. 1016, at 25 (1939)); *see generally* 15 U.S.C. § 77bbb (discussing the necessity for regulation of indentures and the purposes of the statute). By disregarding the proof of ownership requirements and conditions precedent to suit in the Indentures and Notes, the First Department injected uncertainty into an area in which Congress and the courts have recognized that predictability should be paramount.

The Indentures and Notes require investors who wish to pursue legal action to prove that their ownership interests are listed on the Registers kept by the Trustee. Each Indenture specifies that:

- the Trustee shall maintain a Register showing "all transfers and changes of ownership" of the Notes, R. 562, 690, 800;
- "[t]he holding of Notes for purposes of th[e] Indenture shall be proved by the Register," R. 606, 713, 823; and
- "any Person in whose name any Note shall be registered" shall be treated "as the absolute owner" of the Note "for all . . . purposes," R. 659, 740, 853.

The Notes incorporate these requirements and further specify that:

- "The Notes, and transfers thereof, and of ***beneficial interests therein, shall be***

registered as provided in the Indenture[s]." R. 659, 740, 850 (emphasis added).

Notably, plaintiffs concede that they are not listed in the Registers. Brief for Plaintiffs-Respondents in Final Summary Judgment Appeal at 7.

The Indentures also include "no action" clauses precluding a Noteholder from suing until 30 days after Noteholders representing 25% of the outstanding principal "ma[ke] written request upon the Trustee to institute . . . suit in its own name." R. 592, 701, 811. An agent making the request must be "duly appointed in [a] writing" that is "received by the Trustee." R. 605-06, 712-13, 822-23.

Plaintiffs never complied with these requirements because they did not present proof of their registered ownership of the Notes (which they could not) or their identity and their agents' authority to the Trustee. This is no small slip to be excused lightly. Section 315 of the TIA requires that, in the case of a default like the one that occurred here, the indenture trustee must fulfill its responsibilities with "the same degree of care and skill . . . as a prudent man would exercise or use under the circumstances in the conduct of his own affairs." 15 U.S.C. § 77*ooo*(c). The trustee cannot exercise this degree of care in evaluating whether to institute suit in its own name if it receives only a barebones request to do so from entities that do not identify themselves, let alone their interest.

Indentures and notes structured to comply with the TIA serve the same goals as the statute – namely, protection of the interests of investors,

trustees, and issuers alike. The statute recognizes the importance of maintaining lists of owners and requiring holders to prove ownership before the indenture trustee may act. Section 312 mandates that trustees receive updated lists of holders and only provide such information to holders wishing to communicate with other holders upon receiving "reasonable proof" of ownership. 15 U.S.C. §§ 77*lll*(a)-(b); *see also* American Bar Foundation, Commentaries on Indentures 278-84 (1971) [hereinafter "*Commentaries on Indentures*"] (observing that "the names of the registered holders are readily available from the debenture register maintained by the Trustee"). The reasons for these requirements are obvious: to ensure that the trustee knows who the current holders are and to prevent the dissemination of sensitive information to entities that only purport to be holders.

Requiring proof of ownership through registers, as these Indentures and Notes do, similarly protects holders, trustees, and issuers by eliminating any confusion as to ownership and the accompanying potential for multiple liability for the same claimed interests (which in turn lessens the assets available to *bona fide* registered holders). *See Commentaries on Indentures*, *supra*, at 191 (stating that the "major purpose" of indenture provisions allowing the issuer and trustee to rely on registers to determine ownership "is to protect the Company and the Trustee against conflicting claims of ownership or rights to payment"). No action clauses likewise protect issuers and holders because they "deter individual debentureholders from bringing independent law suits for unworthy or unjustifiable

reasons, causing expense to the Company and diminishing its assets." *Id.* at 232-34.[7]

Investors and issuers rely on the strict enforcement of such provisions to protect their interests, and, until the decisions in this case, that reliance was supported by settled precedent requiring adherence to indenture terms. The First Department itself has previously held on multiple occasions that a beneficial owner may not sue when "the Indenture specifically define[s] those who could seek a remedy for non-payment as holders of record." *Caplan v. Unimax Holdings Corp.*, 591 N.Y.S.2d 28, 29 (App. Div. 1st Dep't 1992); *see also Springwell Navigation Corp. v. Banluis CorporaciOn, S.A.*, 849 N.Y.S.2d 34, 34 (App. Div. 1st Dep't 2007); *MacKay Shields LLC v. Sea Containers, Ltd.*, 751 N.Y.S.2d 485, 486 (App. Div. 1st Dep't 2002).

Similarly, courts have consistently required compliance with no action clauses before noteholders may sue. *See, e.g., Peak Partners, LP v. Republic Bank*, 191 Fed. Appx. 118, 126-27 (3d Cir. 2006) (affirming dismissal of claim when holders did not

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[7] *See also, e.g., Feldbaum v. McCrory Corp.*, No. 12006, 1992 Del. Ch. LEXIS 113, at *20 (Del. Ch. June 1, 1992) ("The primary purpose of a no-action clause is . . . to protect issuers from the expense involved in defending lawsuits that are either frivolous or otherwise not in the economic interest of the corporation and its creditors. In protecting the issuer such clauses protect . . . against the exercise of poor judgment by a single bondholder or small group of bondholders, who might otherwise bring a suit against the issuer that most bondholders would consider not to be in their collective economic interest.").

comply with no action clause); *McMahan & Co. v. Wherehouse Entm't, Inc.*, 65 F.3d 1044, 1050 (2d Cir. 1995) (no action clauses are "strictly construed") (internal quotation marks omitted); *Feldbaum*, 1992 Del. Ch. LEXIS 113, at *25 ("[C]ourts systematically conclude that, in consenting to no-action clauses by purchasing bonds, plaintiffs waive their rights to bring claims that are common to all bondholders, and thus can be prosecuted by the trustee, unless they first comply with the procedures set forth in the clause . . . ."); *Feder v. Union Carbide Corp.*, 530 N.Y.S.2d 165, 166-67 (App. Div. 2d Dep't 1988) (dismissing action brought by holders that did not comply with conditions precedent to suit set forth in indenture).

Because the provisions in these Indentures are typical, the ramifications of the decisions here reach far beyond this case.[8] As one court has observed, "[n]ot least among the parties who must comply with

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[8] The American Bar Foundation long ago promulgated model indenture provisions to bring certainty to long-term debt financing. *See Commentaries on Indentures*, *supra*, at 2-3. As a result, many indentures contain very similar, if not identical, provisions. For example, the no action clauses of the Indentures here are virtually identical to the model provisions. *Compare* R. 592-93 § 4.6, 701 § 4.6, & 811 § 4.6 *with Commentaries on Indentures*, *supra*, at 232 § 5.7 [§ 507]. The same is true of the requirement that an agent must be duly appointed in writing in order to act for a holder. *Compare* R. 605-06 § 6.1, 712-13 § 6.1, & 822-23 § 6.1 *with Commentaries on Indentures*, *supra*, at 52, § 1-4 [§ 104]. Ignoring standard requirements, as the First Department did in this case, casts doubt on the future interpretation of all similar provisions.

or refer to the indenture are the members of the investing public and their investment advisors." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 943 (5th Cir. 1981) (en banc). The First Department's departure from this rule has injected uncertainty into a formerly settled and important area of the law. Review by this Court is warranted to restore the protections and uniformity Congress sought to create through the TIA.

CONCLUSION

The First Department's decisions in this case conflict with established law of this Court and others on important federal questions concerning States' ability to enforce their laws beyond their territorial borders, international comity, and the federal Trust Indenture Act. The petition for a writ of certiorari should be granted and the decisions reversed or, in the alternative, summarily reversed.

Respectfully submitted,

KENNETH R. PUHALA
BENJAMIN P. DEUTSCH
JOEL MCHUGH
NILAM A. SANGHVI
SCHNADER HARRISON SEGAL & LEWIS LLP
140 Broadway, Suite 3100
New York, NY 10005
(212) 973-8140

TIMOTHY K. LEWIS
Counsel of Record
DEENA JO SCHNEIDER
STEPHEN A. FOGDALL
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market St., Suite 3600
Philadelphia, PA 19103
(215) 751-2166

Attorneys for Petitioners

APPENDIX A

Tom, J.P., Friedman, Gonzalez, Sweeny, Kavanagh, JJ. [of Appellate Division of New York Supreme Court, First Department]

1964 Gryphon Domestic VI, LLC, et al.,
Plaintiffs-Respondents,

Warner Mansion Fund, Index 603315/02
Plaintiff,

-against-

APP International Finance Company, et al.,
Defendants-Appellants.

Schnader Harrison Segal & Lewis LLP, New York (Kenneth R. Puhala of counsel), for appellants.

Cleary Gottlieb Steen & Hamilton LLP, New York (Deborah M. Buell of counsel), for respondents.

Judgment, Supreme Court, New York County (Helen E. Freedman, J.), entered February 24, 2006, on default of certain notes, to plaintiff Gryphon against the APP/Lontar/Asia defendants in the principal sum of $9,683,695, to plaintiff OCM II against APP/Lontar/Asia in the principal sum of $72,406,578, to OCM II against the Indah Kiat defendants in the principal sum of $25,402,604, to plaintiff OCM III against APP/Lontar/Asia in the

principal sum of $52,649,728, to OCM III against Indah Kiat in the principal sum of $24,052,517, to plaintiff Columbia against APP/Lontar/Asia in the principal sum of $2,699,817, to Columbia against Indah Kiat in the principal sum of $696,016, to plaintiff Gramercy against APP/Lontar/Asia in the principal sum of $23,463,982, and to Gramercy against Indah Kiat in the principal sum of $51,577,248, unanimously affirmed, with costs.

Defendants' procurement of judgments in Indonesia was in bad faith. They deliberately erected legal impediments to the enforcement of this Court's orders with respect to indentures governed by New York law (*see e.g.* 41 AD3d 25 [2007]). Principles of comity will not prevent summary judgment in plaintiffs' favor under these circumstances.

Defendants' interpretation of the "no action" clause is unpersuasive, given the language of the indentures. These sophisticated parties could have included a requirement in the notes that any request or demand by an agent on a noteholder's behalf be accompanied by written proof of agency, but they did not. Nor did they indicate that the absence of a writing accompanying such a demand would be "insufficient" under its provisions. The trustee believed the demand to be genuine, even in the absence of a writing establishing the agency relationship.

There is no basis for further discovery. We have considered defendants' remaining arguments and find them without merit.

M-5318 *Gryphon Domestic VI, LLC, et al. v. APP Int'l Fin. Co., et al.*

Motion seeking leave to supplement the record denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 13, 2007

/s/ Clerk
CLERK

APPENDIX B

[NEW YORK] SUPREME COURT, APPELLATE DIVISION

First Department, September 2006 APR 17, 2007

Angela M. Mazzarelli, J.P.
David Friedman
Luis A. Gonzalez
James M. Catterson
Bernard J. Malone, Jr., JJ.

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Gryphon Domestic VI, LLC, et al.,
Plaintiffs-Appellants-Respondents,

Warner Mansion Fund,
Plaintiff,

-against-

APP International Finance Company, B.V., et al.,
Defendants,

Indah Kiat International Finance Company B.V., et al.,
Defendants-Respondents-Appellants.

— — — — —

Gryphon Domestic VI, LLC, et al.,
Plaintiffs-Appellants,

Warner Mansion Fund,
Plaintiff,

-against-

APP International Finance Company, B.V., et al.,
Defendants,

Indah Kiat International Finance Company B.V., et al.,
Defendants-Respondents.

Cross appeals from an order of the Supreme Court, New York County (Helen E. Freedman, J.), entered August 23, 2005, insofar as it vacated the restraining notices that plaintiffs served on defendants Indah Kiat International Finance Company B.V. and P.T. Indah Kiat Pulp & Paper Corporation and failed to order defendants to turn over certain property.

Plaintiffs appeal from an order of the same court and Justice, entered on or about March 16, 2006, insofar as it vacated the portion of the 2005 order which had enjoined defendants from transferring their assets into Indonesia.

Siller Wilk LLP, New York (Helen A. Rella and Jay S. Auslander of counsel), for appellants-respondents/appellants.

Schnader Harrison Segal & Lewis LLP, New York (Kenneth R. Puhala and Benjamin P. Deutsch of counsel), for respondents-appellants/respondents.

CATTERSON, J.

In June 1994, the defendant Indah Kiat International Finance Company B.V. (hereinafter referred to as "Indah Kiat International" or the "issuer"), a Dutch corporation, issued $200 million of 11⅞% guaranteed secured notes due in 2002 (hereinafter referred to as the "notes"). The defendant P.T. Indah Kiat Pulp & Paper Corporation (hereinafter referred to as "P.T. Indah Kiat" or the "guarantor"), an Indonesian corporation, guaranteed payment. The notes were secured by collateral located in Indonesia.

It is uncontested that the notes, and the indenture pursuant to which they were issued, are governed by New York law. The defendants submitted to the non-exclusive jurisdiction of the state and federal courts located in New York City. They also appointed CT Corporation as their agent for service of process:

> "As long as any of the Notes remain outstanding, each of the Issuer and the Guarantor will at all times have an authorized agent in New York City, upon whom process may be served . . . Service of process upon such agent and written notice of such service mailed or delivered to the Issuer or the Guarantor . . . shall to the fullest extent permitted by law be deemed in every respect effective service of process

> upon the Issuer or the effective service of process upon the Issuer or the Guarantor . . . Each of the Issuer and the Guarantor hereby irrevocably appoints CT Corporation as its agent for such purpose . . . Notwithstanding the foregoing, the Issuer or the Guarantor may, with prior written notice to the Trustee, terminate the appointment of CT Corporation and appoint another agent for the above purposes so that the Issuer and the Guarantor shall at all times have an agent for the above purposes in New York City."

In March 2001, Indah Kiat International stopped paying on the notes. Despite due demand, P.T. Indah Kiat, the guarantor, made no payment on the notes. After defaulting, the defendants (and the other members of the corporate family to which the defendants belong) engaged in negotiations with their creditors.

At some point before March 11, 2003, the date of the amended complaint, the plaintiffs -- whom this Court had previously described as "institutional traders in distressed debt commonly known as 'vulture funds'" purchased some of the notes.[1] On October 20, 2003, the IAS court granted the plaintiffs

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[1] Gryphon Domestic VI, LLC v. APP Intl. Fin. Co., B.V., 28 A.D.3d 322, 323 814 N.Y.S.2d 110, 112 (2006).

summary judgment on their notes. This Court affirmed in relevant part. Gryphon Domestic VI, LLC v. APP Int'l Fin. Co., B. V., 18 A.D.3d 286, 795 N.Y.S.2d 43 (2005).

On November 13, 2003, evidently cognizant of the benefits of playing on one's homefield, P.T. Indah Kiat sued the plaintiffs in Indonesia, seeking, inter alia, annulment of the notes and the indenture and an injunction that would prevent the plaintiffs (now the defendants in the Indonesian action) from enforcing or collecting on the notes or indenture. To no one's surprise, the Indonesian court issued the requested injunction.

In June 2004, the plaintiffs, undeterred by the rulings of the Indonesian court, served a restraining notice on each defendant. Each notice stated:

> "to the extent you are in possession or in custody of property in which any or all of the judgment debtors . . . have an interest . . . YOU ARE FORBIDDEN to make or suffer any sale, assignment or transfer of, or interfere with, any such property or pay over or otherwise dispose of any such debt except as therein provided" (emphasis in original).

In September 2004, the plaintiffs moved for a turnover order. The defendants' counsel negotiated a briefing schedule and the plaintiffs thereafter served an amended turnover motion on the defendants' counsel. The only substantive difference between the two motions for a turnover order was that the amended motion asked that personal property other

than cash be turned over to the sheriff of New York County rather than to the plaintiffs' counsel.

The plaintiffs first requested that the defendants pay the judgment from the property covered by the restraining notices. If that did not yield enough money to satisfy the judgment, the plaintiffs asked that the following items (among others) be turned over: all cash held in certain specified banks; all interests and holdings in certain specified finance and trading subsidiaries; certain paper, packaging and pulp mills located in Indonesia; and "all real and tangible property securing the notes." The plaintiffs submitted documents showing that the defendants owned the above assets.

Additionally, the plaintiffs made the following demand:

> "To the extent the Judgment Debtors do not possess, have custody of or control the possession or custody of any stock or other certificates or instruments evidencing their ownership in any subsidiaries or other entities, we ask the Court to issue an order that itself will serve as an assignment . . . to the Judgment Creditors, of each Judgment Debtor's right, title and interest, in any such subsidiary or other entity in which such Judgment Debtor has an interest, and directing that the secretary or other custodian of each such subsidiary's or other entity's stock books and records, record such transfer to the Judgment Creditors on the

> stock books and records of such subsidiary or other entity."

The defendants opposed the plaintiffs' motion and cross-moved to vacate the June 2004 restraining notices, contesting service. The defendants also asserted that "a restraint on Indah Kiat's . . . ability to make any payments or transfers of property anywhere in the world . . . would shut down APP's business operations on a global scale." APP is the parent company of both defendants. The defendants did not deny owning any of the assets listed by the plaintiffs.

Citing, ABKCO Indus. v. Apple Films, Inc., (39 N.Y.2d 670, 674-675, 385 N.Y.S.2d 511, 513, 350 N.E.2d 899, 901 (1976)) and Matter of National Union Fire Ins. Co. v. Advanced Empl. Concepts, Inc., (269 A.D.2d 101, 703 N.Y.S.2d 3 (2000)), the court below vacated the restraining notices because the defendants' "property is located outside of New York, and restraining notices issued by the Court do not reach property in other jurisdictions."

But the court rejected the defendants' argument that it could not compel them to turn over property located outside of New York. The court also rejected the defendants' argument that the plaintiffs "never properly served them with notice of the turnover motion."

The court described all of the plaintiffs' attempts at service on the defendants and then held that,

> "At least one of those methods constituted good service on the Judgment Debtors,

> namely mailing the notice of motion by certified mail, return receipt requested, in October 2004 to CT Corp., while mailing a copy to the Judgment Debtors at their business addresses. The Judgment Debtors were contractually obligated to accept service by that method."

The court rejected the defendants' argument that they had discharged CT Corp. in September 2002, reasoning: "the Judgment Debtors breached their obligations under the indenture by failing to inform its trustee in advance that they were discharging CT Corp., and by failing to immediately name a replacement agent. As a result, the appointment of CT Corp. remained irrevocable under the Indenture."

The court then refused to order the defendants to turn over their bank accounts, holding that, "To reach the bank deposits, the Judgment Creditors would have to bring a special proceeding under CPLR 5225(b) naming the banks as respondents."

The court also refused to order the defendants to turn over mills and other real property, "inasmuch as delivery orders under CPLR 5225 can only apply to money or personal property."

However, the court did find some property that could be turned over:

> "the Judgment Creditors have made a *prima facie* showing that P.T. Indah Kiat . . . possesses stock certificates for a number of [its] subsidiaries and affiliates. As evidence, the Judgment Creditors submit (1) a

> corporate organization chart produced by a non-party in response to an information subpoena and (2) consolidated financial statements and SEC registration statements. The Judgment Debtors wrongly claim that the Judgment Creditors' evidence is inadequate, but they never deny that P.T. Indah Kiat . . . owns the stock certificates."

The court rejected the defendants' argument that a turnover order would jeopardize their restructuring, stating, "the Judgment Debtors offer no explanation why an order directing them to satisfy the judgment in this action would disrupt their restructuring of different indebtedness to other creditors."

The court also rejected the defendants' argument that a turnover order would conflict with the anti-suit injunctions issued by the Indonesian courts, stating, "an order by a foreign court that enjoins and restrains the parties in proceedings in that court does not affect the courts of this state and their proceedings." However, the court stayed the turnover order "insofar as it pertains" to property currently in Indonesia because it believed that the defendants could satisfy the judgment "by delivering assets located outside of Indonesia." In furtherance of its order, the court enjoined the defendants "from transferring their assets into Indonesia [. . .] until the Judgment is satisfied."

The defendants then moved to vacate the injunction prohibiting them from transferring assets into Indonesia, arguing that the court had issued it

sua sponte and without notice. The court vacated the injunction because "the plaintiffs did not apply for this broad injunctive relief," and "New York courts cannot restrain transfers of property located outside of the state." On May 4, 2006, this Court stayed the IAS court's vacatur of its injunction.

All plaintiffs except Warner Mansion Fund now appeal the motion court's orders. The defendant's cross-appeal the 2005 order to the extent it found that the plaintiffs had properly served them with the turnover motion and ordered them to turn over stock certificates located outside Indonesia.

The defendants contend, and the motion court agreed, that a turnover order pursuant to CPLR 5225(a) cannot reach property outside New York. This was error. In Miller v. Doniger, (28 A.D.3d 405, 814 N.Y.S.2d 141 (2006)) and in Starbare II Partners L.P. v. Sloan, (216 A.D.2d 238, 239, 629 N.Y.S.2d 23, 23 (1995)), this Court squarely held that the defendant judgment debtors could be ordered to turn over out-of-state assets to a New York sheriff.

The defendants contend that Miller and Starbare should be limited to situations where a judgment debtor removes property from New York. However, those cases did not hinge on removal of property from the jurisdiction. Rather, the explicit rationale was that the court could order the defendant judgment debtor to turn over property because it had personal jurisdiction over the defendant. Starbare, 216 A.D.2d at 239, 629 N.Y.S.2d at 23.

The defendants' citations to cases involving attachment are inapposite. Clearly, it would violate

the sovereignty of another state if a New York sheriff tried to attach property in another state. However, a turnover order merely directs a defendant, over whom the New York court has jurisdiction, to bring its own property into New York. We find no reason why such an order would offend another state's sovereignty, unless the other state has ordered the defendant not to move its property *from* that state, which problem will be considered below.

The defendants pose all manner of hypothetical conflicts between New York law and other states' laws if a turnover order can compel a debtor to surrender non-New York property. However, any such conflict would be solely of the defendant judgment debtors' own making: a defendant simply could avoid any conflict by not subjecting him or herself to New York's jurisdiction.

Finally, the defendants predict an explosion of creditors' litigation in New York. However, since Starbare was decided more than a decade ago, we have seen little evidence of actual conflict, or of the explosion of creditors' litigation predicted by the defendants.

CPLR 5225(a) states, "[N]otice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested."

The defendants contend that they were not properly served with the turnover motions. While they might not have been properly served with the amended motion, we find that they were properly served with the original motion. This constitutes

adequate service given the fact that the original and amended motions are basically the same.

The plaintiffs sent the turnover motion to the defendants by registered mail, return receipt requested. A return receipt was received from Indah Kiat International. Thus, consistent with CPLR 5225(a), the defendant was properly served. The registered mail envelope addressed to P.T. Indah Kiat was returned. However, it is clear that the defendant was avoiding service. For example, when the plaintiffs tried to serve P.T. Indah Kiat personally, an employee said his superior had told him to reject all attempts to serve court-related documents. Similarly, when the plaintiffs tried to serve the restraining notice on P.T. Indah Kiat by registered mail, return receipt requested, the notations on the envelope showed that the defendant had rejected the package.

A defendant may not frustrate service by failing to claim certified mail. See 232 Broadway Corp. v. Calvert Ins. Co., 149 A.D.2d 694, 695, 540 N.Y.S.2d 324, 325 (1989); Rifenburg v. Liffiton Homes, Inc., 107 A.D.2d 1015, 1016, 486 N.Y.S.2d 529, 531 (1985) ("[w]here a corporate defendant has received notice of certified mail in time to defend, it has effectively received notice of the summons contained in such mail"). Furthermore, we note that since the defendants' counsel negotiated a briefing schedule, the defendants clearly had notice of the turnover motion.

In the indenture, the defendants agreed to accept service made on CT Corp. Although the

defendants apparently terminated CT Corp. at some point before the plaintiffs served the turnover motion, the court below properly found that this termination was ineffective because the defendants neither gave prior written notice to the trustee that they were terminating CT Corp. nor appointed another agent for service of process in New York. See Recyclers Consulting Group, Inc. v. IBM-Japan, Ltd., 1997 WL 615014, 1997 US Dist LEXIS 15356 (S.D.N.Y. 1997).

The plaintiffs personally served P.T. Indah Kiat in Indonesia and Indah Kiat International in The Netherlands. The defendants raise no issue with respect to service on Indah Kiat International. However, they contend that service on P.T. Indah Kiat by the plaintiffs' Indonesian counsel violated Indonesian law, which requires service by a bailiff in all cases. The plaintiffs submitted a dueling expert affidavit saying that a bailiff is required only in Indonesian lawsuits, and not foreign suits. However, we need not reach this issue given the adequacy of the service described above. Finally, we note that service was also effectuated through CPLR 311(a)(1) and Business Corp. Law § 307.

The defendants contend that the plaintiffs did not show that they (the defendants) were "in possession or custody of . . . personal property in which [they had] an interest." The defendants are partly correct.

First, as our 2005 decision recognized, P.T. Indah Kiat possesses subsidiaries. However, the 2005 order directed both defendants to deliver stock

certificates. The plaintiffs did not claim that Indah Kiat International owned any subsidiaries. Therefore, the order is modified to direct only P.T. Indah Kiat to turn over stock certificates.

The turnover *decision* of the court below states, "the Judgment Debtors are directed to either (1) pay the Judgment Creditors enough money to satisfy the Judgment in respect to the . . . Notes or (2) deliver to a designated sheriff stock certificates of equivalent value that, as of this date, are located outside of Indonesia." However, the turnover order is worded slightly differently:

> "if [the Judgment Debtors] do not pay the Judgment Creditors enough money to satisfy the Judgment in the amount of $ 68,179,703.97 in respect to the . . . Notes, then, within thirty. . . days from service of notice of entry of this Order, they must deliver to a New York County sheriff, stock certificates of equivalent value that, as of May 23, 2005, were located outside of Indonesia" (emphasis added).

The plaintiffs contend that the order should have tracked the decision and directed the defendants to pay the judgment. The plaintiffs are correct and the discrepancy between the two constitutes error given the circumstances of the case.

While a party acting in good faith would read the order in conjunction with the decision and conclude that it should, in the first instance, pay $68 million, the defendants have apparently used the language of the order as an excuse to pay nothing. As for the

part of the order directing delivery of stock certificates, the defendants conveniently "do not (and did not) own and possess any stock certificates that were located outside of Indonesia as of May 23, 2005 or at any time since then."

The clear language of CPLR 5225(a) states, "the court shall order that the judgment debtor pay the money . . . to the judgment creditor." The IAS court apparently believed that it had ordered the defendants to pay money; when denying the plaintiffs' motion to hold the defendants in contempt, it held that, "the failure to pay a money judgment itself is not punishable as a contempt of court." This is not a finding that the original order did not require the defendants to pay money.

There appears to be no issue about whether the defendants are in possession of sufficient money. The plaintiff contends that P.T. Indah Kiat "is depositing $16.5 million per month in bank accounts used to repay the principal and interest of restructured debt" and further, that the Judgment Debtors have reported net profits of $17.44 million for the first half of 2005. The defendants did not deny these figures. Instead, they maintained that:

> "Indah Kiat's MRA (Master Restructuring Agreement) imposes . . . tight restriction on Indah Kiat, . . . the encumbering of much of Indah Kiat's property with liens and expressly restricting Indah Kiat's use of any revenues (and profits, if any) to uses permitted by the MRA and on the terms and condition specified in the MRA . . . Those

> MRA-imposed obligations and restrictions preclude Indah Kiat from paying any of its revenues (or profits, if any) to Judgment Creditors."

However, there is no legal reason why the plaintiffs' judgment must be subordinate to the MRA (an agreement between defendants and their other creditors). Thus, the IAS court also should have ordered P.T. Indah Kiat to execute documents transferring ownership interests in its subsidiaries and affiliates.

CPLR 5225(c) states, "The court may order any person to execute and deliver any document necessary to effect payment or delivery." In Jack London Prods., Inc. v. Samuel Bronston Prods., Inc., (22 A.D.2d 870, 254 N.Y.S.2d 397, (1964)), we held that the respondent judgment debtor "should [. . .] be required to execute appropriate instruments enabling the sheriff to realize on respondent's right, title and interest in" various stocks. Whereas the defendants' statement about Indah Kiat International was straightforward (it "never has had an ownership interest in any other entity"), their statement about P.T. Indah Kiat was very careful: "To the extent that Judgment Debtor Indah Kiat has or had an ownership interest in any other entity, no such ownership interest is or was represented or evidenced by any stock certificates that Indah Kiat owned and possessed in any location outside of Indonesia as of May 23, 2005 or at any time since then." We recognize that this could mean that P.T. Indah Kiat possessed stock certificates, but such certificates were located in Indonesia. However, the

defendants' statement could also be interpreted to mean that P.T. Indah Kiat's ownership is evidenced in some form other than stock certificates. If the latter is the case, P.T. Indah Kiat should be ordered to execute appropriate documents so as not to exalt form over substance.

The plaintiffs contend that the turnover order should have included certain specified mills located in Indonesia. This argument is unavailing. CPLR 5225(a) refers to the delivery of "personal property" to the sheriff. Paper mills consist of huge buildings and heavy machinery that are affixed to the land and are immoveable. The mills clearly constitute real property rather than personal property. See People v. Leiby, 184 Misc. 21, 23, 52 N.Y.S.2d 493, 495 (Utica Civ. Ct. 1945) ("real property" includes buildings).

The plaintiffs also contend that the turnover order should have included the collateral secured by the indenture. This argument is also unavailing. The collateral secured by the indenture is governed by separate security documents. If the plaintiffs want to reach that collateral, they must comply with the terms of the relevant documents.

However, the turnover order properly should have included bank accounts. The IAS court and the defendants rely on Matter of Delaney, (256 N.Y. 315, 176 N.E. 407 (1931)). However, that case was interpreting a provision of the CPA, narrower than its subsequently enacted CPLR counterparts. In Delaney, the Court of Appeals stated, "The money deposited with the bank belongs to the bank and is not the property of the depositor. The property of the

depositor is the indebtedness of the bank to it." Id. at 319. The Court noted that "the delivery of tangible personal property may be compelled" under Civil Practice Act § 792, and that the bank's indebtedness to its depositor was not tangible. Id. at 321. However, CPLR 5225 is not limited to tangible personal property; rather, it applies to "money or other personal property" in which the judgment debtor has an interest. For example, in In re Gaming Lottery Secs. Litig., 2001 WL 123807, 2001 U.S. Dist. LEXIS 1204 (S.D.N.Y. 2001), the court issued a turnover order directing the judgment debtor to pay the judgment creditor from its (the debtor's) Royal Bank of Scotland account. See Miller v. Doniger, 28 A.D.3d at 405, 814 N.Y.S.2d at 141; see also Weinstein-Korn-Miller, N.Y. Civ. Prac. ¶ 5225.21 ("The court . . . may use CPLR 5225(c) to order the debtor to execute and deliver a withdrawal slip so that his bank account in this or in another state may be reached").

To the extent that Delaney emphasized the difference between "debt" or "property" (256 N.Y. at 321), it has been superseded. See ABKCO Indus., supra; see also Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A., 190 F.3d 16, 23 (2d Cir. 1999) ("ABKCO virtually erases the distinction in [CPLR] 5201 between 'debt' and 'property'"). Thus, the accounts described in Appendix "A" should have been included in the turnover order.

Finally, the turnover order should have included the defendants' property in Indonesia. The defendants submitted evidence that Indonesian courts have enjoined the plaintiffs "from prosecuting

any enforcement or payment lawsuit or proceeding relating to the [indenture and notes] or taking any step with respect thereto." That is different from saying that the defendants would violate an Indonesian court order if they satisfied the existing New York judgment.

Even if the defendants were found to be in violation of an Indonesian court order, they clearly are the engine of their own misfortune. After the IAS court granted summary judgment against them, they started a competing lawsuit in Indonesia. While a state (e.g., New York) may not require a person to do an act in another state (e.g., Indonesia) that is prohibited by the law of that state, orders of foreign courts are not entitled to comity if the litigants who procure them have "deliberately courted legal impediments" to the enforcement of a federal court's orders. Motorola Credit Corp. v. Uzan, 388 F.3d 39, 60 (2d Cir. 2004), cert. denied, 544 U.S. 1044, 125 S. Ct. 2270, 161 L.Ed.2d 1080 (2005) (internal quotation marks and citations omitted).

The defendants claim that the IAS court decided that the above standard had not been met. However, that decision was rendered in another context: the IAS court was denying the plaintiffs' motion to enjoin the defendants from prosecuting the Indonesian lawsuit. Even if the IAS court found that the defendants were not acting in bad faith, the ruling is not binding on this Court. We find that the defendants clearly are engaging in conduct evincing bad faith; they challenged a standard and legitimate indenture that is governed by New York law and

managed to procure an Indonesian court order declaring the indenture invalid on the ground that it violated Indonesian law.

The defendants cite three cases for the proposition that "United States courts uniformly have recognized the legitimacy of Indonesia's judicial system." However, two of those cases PT United Can Co. v. Crown Cork & Seal Co., (138 F.3d 65 (2d Cir. 1998)) and Zipfel v. Halliburton Co., (832 F.2d 1477 (9th Cir. (1987)), cert. denied 486 U.S. 1054, 108 S. Ct. 2819, 100 L.Ed.2d 921 (1988)), amended on other grounds, (861 F.2d 565 (9th Cir. 1988)) were forum non conveniens cases. In a forum non conveniens analysis, an alternative forum is considered "adequate" if the defendant is amenable to process in that jurisdiction and the alternative forum permits litigation of the subject matter of the dispute. See e.g. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n. 22 (1981). That is different from the standard for recognition of a foreign judgment. See e.g., CPLR 5304 (grounds for non-recognition of a foreign money judgment).

The defendants' third case, Matter of Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, (2004 U.S. Dist. LEXIS 23870, 2004 WL 2712556 (S.D.N.Y. 2004)) merely stated that Indonesian accounting principles and Indonesian law about corporate separateness were the same as in the rest of the civilized world and that, if an Indonesian defendant refused to pay its supplier, the supplier could sue in Indonesia.

The plaintiffs submitted extensive materials casting doubt on the Indonesian legal system. For example, the United States State Department country report for 2003 says that the Indonesian judiciary "was often influenced by [. . .] business interests,"[2] that Indonesian judges "were subject to pressure from governmental authorities, which often influenced the outcome of cases" and that "[w]idespread corruption continued throughout the legal system . . . . Bribes influenced prosecution, conviction, and sentencing in countless civil and criminal cases." See also In re Perry H. Koplik & Sons, Inc., 2006 WL 3017346. The United Nations Online Network in Public Administration and Finance has stated, "Indonesia's legal system is notoriously corrupt [. . .] The courts do not function in a timely and effective manner, nor do they carry out justice with due process." The International Commission of Jurists also has noted the corruption in Indonesian courts.

The IAS court should not have vacated the injunction prohibiting the defendants from transferring assets into Indonesia. The IAS court had the power to issue the injunction, even though it related to extraterritorial conduct, because it had jurisdiction over the defendants. See Abuhamda v. Abuhamda, 236 A.D.2d 290, 654 N.Y.S.2d 11 (1977) (affirming injunction directing bank, which engaged

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[2] We note that P.T. Indah Kiat is "the largest pulp and paper company in Indonesia."

in business in New York, not to pay out funds from an account in Jordan).

The injunction was clearly necessary to protect the court's order. The turnover order applied only to stock certificates located outside Indonesia, so the defendants could easily have rendered it nugatory by moving the certificates into Indonesia. See Indosuez Intl. Fin., B.V. v. National Reserve Bank, 304 A.D.2d 429, 430-431, 758 N.Y.S.2d 308, 310 (2003) ("once there was a New York judgment on the merits, the courts of this State were entitled to protect it"); see also Cold Spring Light, Heat & Power Co. v. Selleck, 256 N.Y. 451, 456, 176 N.E. 836, 838 (1931) ("[c]ourts of equity undoubtedly have power to make such orders as may be necessary to carry out and give effect to their decrees").

The IAS court considered the injunction to be "problematic" because "the plaintiffs did not apply for this broad injunctive relief." However, courts are permitted to issue injunctions sua sponte. See e.g., Melnitzky v. Apple Bank for Sav., 19 A.D.3d 252, 253, 797 N.Y.S.2d 470, 471 (2005). Cf. Chang v. SDI Int'l., Inc., 15 A.D.3d 518, 519, 792 N.Y.S.2d 91, 92 (2005).

The IAS court also stated that "New York courts cannot restrain transfers of property located outside of the state." However, the case on which it relied, Matter of Natl. Union Fire Co. v. Advanced Empl. Concepts, Inc., (269 A.D.2d 101, 703 N.Y.S.2d 3 (2000)), does not stand for that proposition. Rather, in National Union we held that "the court was without authority to *attach* bank accounts outside of

New York [. . .]. In order to be subject to *attachment*, property must be within the court's jurisdiction." Id. (emphasis added). Moreover, this Court's decision in Abuhamda (236 A.D.2d at 290) demonstrates that a New York court can restrain transfers of property outside the state, so long as it has jurisdiction over the transferor.

Accordingly, the order of the Supreme Court, New York County (Helen E. Freedman, J.), entered August 23, 2005, insofar as it vacated the restraining notices that plaintiffs served on defendants Indah Kiat International Finance Company B.V. and P.T. Indah Kiat Pulp & Paper Corporation and failed to order defendants to turn over certain property, should be modified, on the law and the facts, to direct defendants to pay plaintiffs sufficient funds to satisfy the judgment; and to direct P.T. Indah Kiat to turn over stock certificates wherever located, execute appropriate documents transferring ownership of its subsidiaries to plaintiffs if such ownership is evidenced in some form other than stock certificates, and turn over the bank accounts listed in part A of the Appendix, and otherwise affirmed, with costs in favor of plaintiffs payable by defendants-respondents-appellants. Order, same court and Justice, entered on or about March 16, 2006, insofar as it vacated the portion of the 2005 order which had enjoined defendants from transferring their assets into Indonesia, should be reversed, on the law, with costs, and the injunction against transferring assets into Indonesia reinstated.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

ENTERED: APRIL 17, 2007

/s/ Catherine O'Hagan Wolfe
CLERK

APPENDIX: P.T. INDAH KIAT'S BANK ACCOUNTS

A. Accounts That Should Be Included in the Turnover Order[1]

Accounts at:

PT Bank Negara Indonesia (Persero) Tbk

PT Bank Internasional Indonesia Tbk

Standard Chartered Bank, Jakarta

PT Bank Mandiri (Persero) Tbk

The Hongkong and Shanghai Banking Corporation Limited, Jakarta

PT Bank Lippo Tbk

ABN Amro Bank, N.V., Jakarta

PT Bank CIC International Tbk

Bank of America, Jakarta

PT Bank UFJ Indonesia, Jakarta

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[1] Listed in the order that plaintiffs used in their turnover motion and their list of defendants' bank accounts.

American Express Bank, N.A., Jakarta

PT ANZ Panin Bank

Bank of China, Jakarta

PT Bank Mizuho Indonesia

B. Accounts That Should Not Be Included in the Turnover Order

Accounts at:

Bank Rakyat Indonesia

Indonesian Bank Restructuring Agency/Badan Penvehatan Perbankan

Nasional

PT Indah Kiat's 2002 financial statement does not say that P.T. Indah Kiat has an account at this bank

Bank Syariah Mandiri

Bank Mega

Woori Bank

DBS Bank Ltd.

BII Bank Cook Islands

Bank International Ningbo

APPENDIX C

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on October 16, 2007.

PRESENT – Hon. Angela M. Mazzarelli, Justice Presiding

David Friedman
Luis A. Gonzalez
James M. Catterson
Bernard J. Malone, Jr., Justices

M-2637
Index No. 603315/02

----------X

Gryphon Domestic VI, LLC, et al.,
Plaintiffs-Appellants-Respondents,

Warner Mansion Fund,
Plaintiff,

-against-

APP International Finance Company B.V., et. al.,
Defendants

Indah Kiat International Finance Company B.V., et al.
Defendants-Respondents-Appellants.

– – – – –

Gryphon Domestic VI, LLC, et al.
Plaintiffs-Appellants,

Warner Mansion Fund,
Plaintiff,

-against-

APP International Finance Company B.V., et. al.,
Defendants

Indah Kiat International Finance Company B.V., et al.,
Defendants-Respondents.

----------X

M-2637 October 16, 2007

Defendants-respondents and defendants-respondents-appellants having moved for reargument of or, in the alternative, leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 17, 2007 (Appeal No. 9309-9309A),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

/s/ David Spoleony
Deputy Clerk

APPENDIX D

Buckley, P.J., Marlow, Sullivan, Gonzalez, Sweeny, JJ. [of Appellate Division of New York Supreme Court, First Department]

6084 Gryphon Domestic VI, LLC, et al.,
Plaintiffs-Respondents,

-against-

APP International Finance Company, B.V., et al.,
Defendants-Appellants.

Schnader Harrison Segal & Lewis LLP, New York (Kenneth R. Puhala of counsel), for appellants.

Cleary, Gottlieb, Steen & Hamilton LLP, New York (Deborah M. Buell of counsel), for respondents (except Warner Mansion Fund).

Judgment, Supreme Court, New York County (Helen E. Freedman, J.), entered April 13, 2004, which, upon a prior grant of summary judgment, awarded plaintiffs damages sustained by reason of defaults under three note issues, unanimously modified, on the law, to vacate the awards premised on the Lontar and Indah Kiat 06 Notes, and otherwise affirmed, without costs, and the matter remanded for further proceedings.

Defendants contend that plaintiffs failed to comply with certain conditions precedent set out in § 4.6 of the Lontar indenture and § 4.5 of the Indah Kiat indentures. However, these conditions do not apply to the Indah Kiat 02 Notes, which have already matured (*see e.g. UPIC & Co. v Kinder-Care Learning Ctrs., Inc.*, 793 F Supp 448, 454-455 [SD NY 1992]). Contrary to defendants' claim, plaintiffs did raise this argument in the motion court, and, accordingly, it is properly preserved as a ground for affirming the judgment insofar as it pertains to the Indah Kiat 02 Notes (*see e.g. Matter of Am. Dental Coop. v Attorney Gen.*, 127 AD2d 274, 279 n 3 [1987]). Plaintiffs submitted sufficient evidence, including account statements from third parties and affidavits from third parties linking those account statements to the Depository Trust Company (DTC), that they owned Indah Kiat 02 Notes as of the date of the amended complaint. Absent any reason to doubt the third parties' credibility -- and defendants have not proffered any -- it was not necessary for plaintiffs to obtain documents from DTC and Euroclear (*see e.g. Gonzalez v 1251 Americas Assocs.*, 262 AD2d 210, 211 [1999]). Because plaintiffs' proof included business records, the Indah Kiat 02 judgment was not based wholly on inadmissible hearsay (*cf. Zelnik v Bidermann Indus. U.S.A., Inc.*, 242 AD2d 227, 228 [1997]). CPLR 3212(f) did not bar the grant of summary judgment on the Indah Kiat 02 Notes (*see e.g. Citibank, N.A. v Furlong*, 81 AD2d 803, 804 [1981]).

Summary judgment, however, was improperly granted with respect to plaintiffs' claims premised on the Lontar and Indah Kiat 06 Notes. None of the

plaintiffs proved that it owned any notes as of July 23, 2002, the date of the letter in which former plaintiffs General Electric Capital Corporation, Gramercy Advisors, L.L.C., and Oaktree Capital Management, LLC asked the trustee to sue defendants and offered the indemnity required by § 4.6 of the Lontar indenture and § 4.5 of the Indah Kiat indentures. The letter itself is hearsay (*see e.g. Arnold Herstand & Co. v Gallery: Gertrude Stein, Inc.*, 211 AD2d 77, 79 [1995]), plaintiffs' affidavits do not even clearly state that they owned the notes as of July 2002, as opposed to the date of the amended complaint (*see Babb v Hillcrest Homeowners Assn.*, 309 AD2d 1137, 1138 [2003]), and the earliest account statement (for only one of the plaintiffs) is from February 2003, seven months after the date of the letter. Further, before plaintiffs moved for summary judgment, defendants had requested account statements. An adverse inference may be drawn from plaintiffs' failure to produce their own account statements for July 2002, which -- unlike documents from DTC and Euroclear -- are within their control (*see e.g. Esterces & Assocs. v Coastal Communications Corp.*, 271 AD2d 286 [2000]).

Plaintiffs OCM Opportunities Fund II, L.P. and OCM Opportunities Fund III, L.P. further failed to prove that Oaktree (the entity that allegedly signed the July 2002 letter on their behalf) was their agent, duly appointed in writing, as required by § 6.1 of the indentures. On their summary judgment motion, they merely submitted affidavits from Oaktree. However, "the declarations of an alleged agent may not be shown for the purpose of proving the fact of agency" (*Moore v. Leaseway Transp. Corp.*, 65 AD2d

697, 698 [1978], *affd* 49 NY2d 720 [1980]). Unlike plaintiffs Gryphon, Columbia/HCA Master Retirement Trust, and Gramercy Emerging Markets Fund, OCM II and OCM III did not submit any written documents, signed by the principal, authorizing the agent. Since defendants had previously requested the written appointments of plaintiffs' agents, and since those documents were under plaintiffs' control, an adverse inference may be drawn from OCM II's and OCM III's failure to produce such documents (*see e.g. Seward Park Hous. Corp. v Cohen*, 287 AD2d 157, 168 [2001]).

We note that vacatur of the awards obtained by these plaintiffs on the Lontar Notes and the Indah Kiat 06 Notes will not leave them without a remedy. In a separate action, the trustee has sued on behalf of all holders of those notes, and defendants have conceded that the conditions precedent in § 4.6 of the Lontar indenture and § 4.5 of the Indah Kiat indentures do not apply to suits by the trustee.

On appeal, for the first time, defendants request that summary judgment be entered in their favor. However, they failed to prove that plaintiffs did not own any notes as of July 23, 2002, or that Oaktree was not OCM II's and OCM III's agent as of July 23, 2002.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 17, 2005
/s/ Catherine O'Hagan Wolfe
CLERK

APPENDIX E

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twentieth *day of* March 2008

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

1-10 Mo. No. 1473

Gryphon Domestic VI, LLC, et al.,
Respondents,
Warner Mansion Fund,
Plaintiff,
v.
APP International Finance Company, et al.,
Appellants.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION March 20, 2008

1-10 Mo. No. 1473
Gryphon Domestic VI, LLC, et al.,
Respondents,
Warner Mansion Fund,
Plaintiff,
v.
APP International Finance Company, et al.,
Appellants.

Motion for leave to appeal denied.

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN PART 39
Justice

Gryphon Dom. VI, LLC
Plaintiff,

- v -

APP Intl. Fin. Co., B.V.
Defendant

INDEX NO. 603315/02

MOTION DATE _____

MOTION SEQ. NO. 033

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits . . .	
Answering Affidavits – Exhibits	
Replying Affidavits	

CROSS-MOTION: ☒ Yes ☐ No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ____ FOR THE FOLLOWING REASON(S): ____

In this action to recover on three issues of promissory notes, plaintiffs move and defendants cross-move for summary judgment. For the reasons set forth below, the motion is granted and the cross-motion is denied.

This is plaintiffs' second application for summary judgment. This Court granted them full summary judgment by its decision and order dated October 23, 2003 (the "Prior Order"), pursuant to which a judgment was entered on April 13, 2004 (the "Judgment"). However, the Appellate Division modified the Judgment by vacating the award in connection with two of the three note issues, while affirming the award in connection with the third issue, and remanded the matter to this Court for further proceedings. *Gryphon Dom. VI, LLC v. APP Intl. Fin. Co., B.V.*, 18 A.D.3d 286 (1st Dept. 2005) *("Gryphon Dom. VI").* For the sake of concision, familiarity with the Prior Order, the Judgment, and the *Gryphon Dom. VI* will be assumed, and the defined terms in those documents will have the same meaning here.

The Appellate Division specified two reasons why plaintiffs' evidence failed to prove their claims in connection with the Lontar Notes and the Indah Kiat 06 Notes. First, the plaintiffs did not prove that they owned those Notes as of July 23, 2002, when the trustee was asked by letter to sue defendants. The Court pointed out that plaintiffs' affidavits did not clearly state that they owned the Notes as of that date, and added that "[a]n adverse inference may be drawn from plaintiffs' failure to produce their own account statements for July 2002." *Gryphon Dom. VI*, 18 A.D.3d at 287.

Second, the Appellate Division found that plaintiffs OCM Opportunities Fund II, L.P. ("OCM II") and OCM Opportunities Fund III, L.P. ("OCM III") did not prove that Oaktree, which allegedly signed the July 2002 letter to the trustee on their behalf, was their duly appointed agent. *Id.*

In their new application for summary judgment, plaintiffs have supplied the proof that the Appellate Division required. Plaintiffs submit account statements and clear affidavits showing that they beneficially owned more than 25% of both the Lontar Notes and the Indah Kiat 06 Notes as of July 23, 2002. Plaintiffs also offer proof that Oaktree was OCM II's and OCM III's duly appointed agent by submitting written partnership agreements that name Oaktree as the general partner of OCM II and OCM III and authorize it to act as their general agent.

In opposition, defendants fail to raise any issue of fact that would defeat plaintiffs' motion, and their cross-motion for summary judgment lacks any merit. Defendants largely re-assert arguments that this Court and the Appellate Division have already rejected. They raise a new defense of illegality, based upon judgments that defendants have obtained from courts in Indonesia declaring the Notes and Indentures invalid. However, this Court has already ruled that Indonesian court rulings about the Notes and Indentures do not affect this proceeding. *Decision & Order* dated May 23, 2005, at 9.

Accordingly, summary judgment is granted to plaintiffs against defendants in connection with the Lontar Notes and the Indah Kiat 06 Notes. Settle order.

Dated: December 8, 2005 /s/ HEF
Helen E. Freedman, *J.S.C.*

Check one: ☒ FINAL DISPOSITION
☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

APPENDIX C

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN PART 39
Justice

Gryphon Dom. VI, LLC,
Plaintiff,

- v -

APP Intl. Fin. Co., B.V.,
Defendant

INDEX NO. 603315/02

MOTION DATE _____

MOTION SEQ. NO. 038

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits . . .	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Best Available Copy

Cross-Motion: ☐ Yes ☒ No

Motion by defendants to resettle the prior order of this Court dated January 11, 2006 is granted without opposition.

ORDERED that the order of the Court dated January 11, 2006 is resettled as set forth in the accompanying Superseding Order dated February 17, 2006

Dated: February 17, 2006 /s/ HEF
Helen E. Freedman, *J.S.C.*

Check one: ☒ FINAL DISPOSITION
☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

FEB 21 2006

NEW YORK
COUNTY CLERK'S OFFICE

At IAS Part 39 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, New York on the 17 of February 2006

PRESENT:
HON. HELEN E. FREEDMAN, JUSTICE

Index No. 02/603315

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GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and WARNER MANSION FUND,

plaintiffs,

- against -

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

defendants.

----------X

SUPERSEDING
ORDER

WHEREAS, a motion having been made by Plaintiffs on June 21, 2005, and having duly come to be heard on September 8, 2005, for an order granting summary judgment, as to Plaintiffs' claims under the Lontar and Indah Kiat 06 Indentures and Notes,

NOW, upon the reading and filing of the Notice of Motion for Summary Judgment dated June 21, 2005 (the "Summary Judgment Motion"), the Affirmations in support of Plaintiffs' motion for summary judgment of Alexa A. Holmes, dated June 3, 2005, and of Jay S. Auslander, dated June 2, 2005, the Affidavits in support of Plaintiffs' motion for summary judgment of Melissa Obegi on behalf of Gryphon, sworn to June 2, 2005, of Melissa Obegi of OCM II, sworn to June 2, 2005, of Melissa Obegi of OCM III, sworn to June 2, 2005, of Melissa Obegi on behalf of Columbia/HCA Trust, sworn to June 2, 2005, of Mel Carlisle, sworn to June 2, 2005, of Richard Ting on behalf of Oaktree Capital Management, LLC ("Oaktree"), sworn to June 2, 2005, of Robert S. Koenigsberger on behalf of GEMF, sworn to June 2, 2005, of Robert Lanava on behalf of GEMF, sworn to June 2, 2005, of Lawanda Roberts of The Bank of New York Trust Company, N.A. ("BNY Trust"), sworn to June 2, 2005, of John Stenerson of The Bank of New York, sworn to June 3, 2005, of Denis J. McCarthy of Bear Stearns, sworn to June 2, 2005, First Affidavit of Stephen C. Dunn of JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), sworn to May 27, 2005, Corrected First Affidavit of Stephen C. Dunn of JPMorgan Chase, sworn to May 31, 2005, Second Affidavit of Stephen C. Dunn of JPMorgan Chase, sworn to May 27, 2005, Corrected Second Affidavit of Stephen C. Dunn of

JPMorgan Chase, sworn to May 31, 2005, the Affidavit of Timothy Sandell, sworn to May 22, 2003, and the Affidavit of Sean Caley, sworn to May 5, 2003, and defendants' cross-motions for summary judgment to dismiss Plaintiffs' causes of action on the Lontar and Indah Kiat 06 Indentures and Notes and to vacate the Prior Judgment dated July 8, 2005 (the "Cross-Motions"), the Affirmation in opposition to Plaintiffs' motion for summary judgment and in support of defendants' Cross-Motions of Kenneth R. Puhala, dated July 8, 2005, the Affidavits in opposition to Plaintiffs' motion for summary judgment and in support of defendants' Cross-Motions of Ferry Siswojo Djongianto, sworn to July 7, 2005, of Hotman Paris Hutapea, sworn to July 7, 2005, of Otto Hasibuan, sworn to July 7, 2005, and the Reply Affirmation in further support of Plaintiffs' motion for summary judgment and in opposition to defendants' Cross-Motions of Deborah M. Buell, dated August 1, 2005, the Affidavits in further support of Plaintiffs' motion for summary judgment and in opposition to defendants' Cross-Motions of Robert S. Koenigsberger on behalf of GEMF, sworn to July 29, 2005, of Robert S. Koenigsberger on behalf of GEMF, sworn to August 2, 2005, of Melissa Obegi, sworn to July 29, 2005, of Melissa Obegi, sworn to August 2, 2005, of Denis McCarthy of Bear Stearns, sworn to July 26, 2005, of Lawanda Roberts of BNY Trust, sworn to July 28, 2005, of Brian Berman on behalf of Oaktree, sworn to July 29, 2005, of Robert L. Rauch on behalf of GEMF, sworn to July 29, 2005, of Neal Sullins on behalf of Gryphon, sworn to July 29, 2005, of Rahmat Bastian, sworn to July 26, 2005, of Humphrey Rithan Djemat, sworn to July

25, 2005, of Anangga Wardhana Roosdiono, sworn to July 26, 2005, of Andri Setia Permana, sworn to July 28, 2005, the Affidavits of Mel Carlisle in further support of OCM II's motion for summary judgment, sworn to July 29, 2005, of Mel Carlisle in further support of OCM III's motion for summary judgment, sworn to July 29, 2005, of Mel Carlisle in further support of Gryphon's motion for summary judgment, sworn to July 29, 2005, of Mel Carlisle in further support of Columbia/HCA Trust's motion for summary judgment, sworn to July 29, 2005, and the Reply Affirmation in further support of defendants' Cross-Motions of Kenneth R. Puhala, dated August 17, 2005, the Reply Affidavits in further support of defendants' Cross-Motions of Ferry Siswojo Djongianto, sworn to August 12, 2005, of Hotman Paris Hutapea, sworn to August 12, 2005, of Otto Hasibuan, sworn to August 12, 2005, and all the attached exhibits to said affirmations and affidavits; and upon all prior pleadings and proceedings herein (the "Summary Judgment Record"), and the matter having been orally argued on September 8, 2005, and after due deliberation this Court having rendered a decision dated December 8, 2005; and

NOW, on motion of Cleary Gottlieb Steen & Hamilton LLP, attorneys for Plaintiffs, it is

ORDERED that the Summary Judgment Motion against defendants APP Finance, Lontar, Asia Pulp & Paper, Indah Kiat Finance and Indah Kiat Pulp & Paper is granted; and it is further

ORDERED that defendants' Cross-Motions for summary judgment to dismiss Plaintiffs' causes of

action on the Lontar and Indah Kiat 06 Indentures and Notes and to vacate the Prior Judgment on the Indah Kiat 02 Indenture and Notes are denied; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Gryphon based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $9,683,695, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
Gryphon	$7,335,000	$2,348,695

Total	Date of Default
$9,683,695	April 9, 2001

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of OCM II based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $72,406,578, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
OCM II	$54,845,000	$17,561,578

Total	Date of Default
$72,406,578	April 9, 2001

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $25,402,604, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
OCM II	$19,380,000	$6,022,604

Total	Date of Default
$25,402,604	June 22, 2001

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of OCM III based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $52,649,728, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
OCM III	$39,880,000	$12,769,728
Total	Date of Default	
$52,649,728	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $24,052,517, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
OCM III	$18,350,000	$5,702,517
Total	Date of Default	
$24,052,517	June 22, 2001	

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Columbia/HCA Trust based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $2,699,817, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
Columbia/HCA Trust	$2,045,000	$654,817

Total	Date of Default
$2,699,817	April 9, 2001

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $696,016, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
Columbia/HCA Trust	$531,000	$165,016

Total	Date of Default
$696,016	June 22, 2001

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of GEMF based on principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $23,463,982, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
GEMF	$17,773,000	$5,690,982
Total	Date of Default	
$23,463,982	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $51,577,248, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
GEMF	$39,349,000	$12,228,248
Total	Date of Default	
$51,577,248	June 22, 2001	

and it is further

ORDERED that Plaintiffs shall turn over any amounts paid or recovered under this Order to the respective Trustees of the above-referenced note offerings and the accompanying indentures for the equal, ratable and common benefit of the noteholders of the series of notes at issue and that notwithstanding such turn over and distribution, Plaintiffs are barred from commencing further actions against defendants seeking further judgments for any amounts under the above-referenced note offerings and the accompanying indentures, provided that nothing in this Order shall prevent Plaintiffs from bringing actions to recover

amounts awarded under this Order, including but not limited to proceedings based on their respective amounts awarded under this Order against defendants in Indonesia or in other jurisdictions that require de novo proceedings as a predicate to enforcing a foreign judgment, and that this Order is without prejudice to the Plaintiffs' obligations or rights with respect to their respective share in any equal and ratable distribution pursuant to the above-referenced notes and the accompanying indentures; provided, however, that under no circumstances shall Plaintiffs retain for their own benefit with respect to their beneficial ownership of the notes more than the amounts awarded hereunder; and it is further

ORDERED that the Clerk is directed to grant Plaintiffs interest as prayed for, allowable by law at the statutory rate of 9% per annum from March 11, 2003 (the date of the Amended Complaint), until the date of entry of judgment, as calculated by the Clerk, and thereafter at the same statutory rate of 9% per annum together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: Feb 21, 2006

ENTER:

/s/ HEF
J.S.C.

FILED

FEB 21 2006
NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX H

Index No. 02/603315

SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF NEW YORK

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GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and WARNER MANSION FUND,

Plaintiffs,

-against-

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants.

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JUDGMENT

A motion having been made by plaintiffs on June 21, 2005, and having duly come on to be heard on September 8, 2005, for an order granting summary judgment, as to plaintiffs' claims under the Lontar and Indah Kiat 06 Indentures and Notes, and after due deliberation this Court having rendered a

memorandum decision dated December 8, 2005 granting plaintiffs' motion for summary judgment and directing settlement of an Order, and issuing a Superseding Order directing entry of judgment, entered on February 21, 2006, and as part of the Order, it was ordered that plaintiffs shall turn over any amounts paid or recovered under the Order to the respective Trustees of the below-referenced note offerings and the accompanying indentures for the equal, ratable and common benefit of the noteholders of the series of notes at issue and that notwithstanding such turn over and distribution, plaintiffs are barred from commencing further actions against defendants seeking further judgments for any amounts under the below-referenced note offerings and the accompanying indentures, provided that nothing in the Order shall prevent plaintiffs from bringing actions to recover amounts awarded under the Order, including but not limited to proceedings based on their respective amounts awarded under the Order against defendants in Indonesia or in other jurisdictions that require de novo proceedings as a predicate to enforcing a foreign judgment, and that the Order is without prejudice to the plaintiffs' obligations or rights with respect to their respective share in any equal and ratable distribution pursuant to the below-referenced notes and the accompanying indentures; provided, however, that under no circumstances shall plaintiffs retain for their own benefit with respect to their beneficial ownership of the notes more than the amounts awarded under the Order,

NOW, on motion of Cleary Gottlieb Steen & Hamilton LLP, attorneys for Gramercy Emerging

Market Fund, Gryphon Domestic VI, LLC, OCM Opportunities Fund II, L.P., OCM Opportunities Fund III, L.P., and Columbia/HCA Master Retirement Trust, it is

ADJUDGED that plaintiff Gryphon Domestic VI, LLC (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (last known mailing address 118 Pioneer Road, Singapore 068805, Republic of Singapore), P.T. Lontar Papyrus Pulp & Paper Industry (last known mailing address Gedung B. Km. 8, Jalan Raya Serpong, Tangerang, West Java, Republic of Indonesia), and Asia Pulp & Paper Company Ltd (last known mailing address 3 Shenton Way, #25-01 Shenton House, Singapore 068805, Republic of Singapore), jointly and severally, the sum of $9,683,695 plus interest in the amount of $2,032,355.79, for a total judgment of $11,716,050.79 based on the default of the 11¾% guaranteed secured notes issued by APP International Finance Company, B.V and guaranteed by P.T. Lontar Papyrus Pulp & Paper Industry and Asia Pulp & Paper Company Ltd., due in 2005 (the "Lontar Notes"), and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund II, L.P. (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company

Ltd. (address above), jointly and severally, the sum of $72,406,578, plus interest in the amount of $15,196,258.14, for a total judgment of $87,602,836.14 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund II, L.P. (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $25,402,604, plus interest in the amount of $5,366,268.22, for a total judgment of $30,768,872.22 based on the default of the 12½% guaranteed secured notes issued by Indah Kiat International Finance Company B.V. and guaranteed by P.T. Indah Kiat Pulp & Paper Corporation, due in 2006 (the "Indah Kiat 06 Notes"), and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund III, L.P. (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $52,649,728, plus interest in the amount of $11,049,809.00, for a total judgment of $63,699,537.00 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund III, L.P. (address above) recover from Indah Kiat International Finance Company B.V (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $24,052,517, plus interest in the amount of $5,081,064.07 for a total judgment of $29,133,581.07 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Columbia/HCA Master Retirement Trust (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $2,699,817, plus interest in the amount of $566,621.35, for a total judgment of $3,266,438.35 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Columbia/HCA Master Retirement Trust (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $696,016, plus interest in the amount of $147,032.43, for a total judgment of $843,048.43 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Gramercy Emerging Markets Fund (c/o Gramercy Advisors LLC, 20 Dayton Avenue, Greenwich, Connecticut 06830) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $23,463,982, plus interest in the amount of $4,924,479.82, for a total judgment of $28,388,461.82 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Gramercy Emerging Markets Fund (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $51,577,248 plus interest in the amount of $10,895,628.91, for a total judgment of $62,472,876.91 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore.

Judgment signed this 24th day of February, 2006

/s/ Norman Goodman
Clerk

FILED

FEB 24 2006

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff	Notes	Pre-Decision Interest			
		*Principal**	*Interest Rate*	*Beginning Date*	*Ending Date*
Gryphon	Lontar	$ 7,335,000	9.0%	3/11/2003	12/8/2005
OCM II	Lontar Notes	$ 54,845,000	9.0%	3/11/2003	12/8/2005
OCM II	Indah Kiat 06	$ 19,380,000	9.0%	3/11/2003	12/8/2005
OCM III	Lontar	$ 39,880,000	9.0%	3/11/2003	12/8/2005
OCM III	Indah Kiat 06	$ 18,350,000	9.0%	3/11/2003	12/8/2005
Columbia/ HCA Trust	Lontar	$ 2,045,000	9.0%	3/11/2003	12/8/2005
Columbia/ HCA Trust	Indah Kiat 06	$ 531,000	9.0%	3/11/2003	12/8/2005
GEMF	Lontar	$ 17,773,000	9.0%	3/11/2003	12/8/2005
GEMF	Indah Kiat 06	$ 39,349,000	9.0%	3/11/2003	12/8/2005

		Pre-Decision Interest	
Plaintiff	*Notes*	*Number of Days*	*Statutory Interest 3/11/03 - 12/08/05*
Gryphon	Lontar	1003	$ 1,814,056.03
OCM II	Lontar Notes	1003	$ 13,563,994.93
OCM II	Indah Kiat 06	1003	$ 4,792,966.03
OCM III	Lontar	1003	$ 9,862,924.93
OCM III	Indah Kiat 06	1003	$ 4,538,231.51
Columbia/ HCA Trust	Lontar	1003	$ 505,759.32
Columbia/ HCA Trust	Indah Kiat 06	1003	$ 131,324.30
GEMF	Lontar	1003	$ 4,395,530.71
GEMF	Indah Kiat 06	1003	$ 9,731,600.63

Plaintiff	*Notes*	Post-Decision Interest		
		*Order Total***	*Total Claim at 12/08/05****	*Interest Rate*
Gryphon	Lontar	$ 9,683,695	$ 11,497,751.03	9.0%
OCM II	Lontar Notes	$ 72,406,578	$ 85,970,572.93	9.0%
OCM II	Indah Kiat 06	$ 25,402,604	$ 30,195,570.03	9.0%
OCM III	Lontar	$ 52,649,728	$ 62,512,652.93	9.0%
OCM III	Indah Kiat 06	$ 24,052,517	$ 28,590,748.51	9.0%
Columbia/ HCA Trust	Lontar	$ 2,699,817	$ 3,205,576.32	9.0%
Columbia/ HCA Trust	Indah Kiat 06	$ 696,016	$ 827,340.30	9.0%
GEMF	Lontar	$ 23,463,982	$ 27,859,512.71	9.0%
GEMF	Indah Kiat 06	$ 51,577,248	$ 61,308,848.63	9.0%

Plaintiff	*Notes*	Post-Decision Interest		
		Beginning Date	*Ending Date*	*Number of Days*
Gryphon	Lontar	12/9/2005	2/24/2006	77
OCM II	Lontar Notes	12/9/2005	2/24/2006	77
OCM II	Indah Kiat 06	12/9/2005	2/24/2006	77
OCM III	Lontar	12/9/2005	2/24/2006	77
OCM III	Indah Kiat 06	12/9/2005	2/24/2006	77
Columbia/ HCA Trust	Lontar	12/9/2005	2/24/2006	77
Columbia/ HCA Trust	Indah Kiat 06	12/9/2005	2/24/2006	77
GEMF	Lontar	12/9/2005	2/24/2006	77
GEMF	Indah Kiat 06	12/9/2005	2/24/2006	77

Plaintiff	*Notes*	Post-Decision Interest *Statutory Interest* *12/08/05 - 2/24/06*	*Total Interest*
Gryphon	Lontar	$ 218,299.77	$ 2,032,355.79
OCM II	Lontar Notes	$ 1,632,263.21	$ 15,196,258.14
OCM II	Indah Kiat 06	$ 573,302.19	$ 5,366,268.22
OCM III	Lontar	$ 1,186,884.07	$ 11,049,809.00
OCM III	Indah Kiat 06	$ 542,832.57	$ 5,081,064.07
Columbia/ HCA Trust	Lontar	$ 60,862.04	$ 566,621.35
Columbia/ HCA Trust	Indah Kiat 06	$ 15,708.13	$ 147,032.43
GEMF	Lontar	$ 528,949.10	$ 4,924,479.82
GEMF	Indah Kiat 06	$ 1,164,028.28	$ 10,895,628.91

Plaintiff	*Notes*	*New Total^*
Gryphon	Lontar	$ 11,716,050.79
OCM II	Lontar Notes	$ 87,602,836.14
OCM II	Indah Kiat 06	$ 30,768,872.22
OCM III	Lontar	$ 63,699,537.00
OCM III	Indah Kiat 06	$ 29,133,581.07
Columbia/ HCA Trust	Lontar	$ 3,266,428.35
Columbia/ HCA Trust	Indah Kiat 06	$ 843,048.43
GEMF	Lontar	$ 28,388,461.82
GEMF	Indah Kiat 06	$ 62,472,876.91

* This figure represents only the principal value of the notes

** This figure represents the principal plus the contract interest due up to March 11, 2003, the date of the Amended Complaint

*** This figure represents the principal plus the contract interest as of the date of the Amended Complaint, plus the statutory interest on principal only for the period 3/11/03 to 12/08/05

^ This figure represents the Order Total plus the statutory interest on principal only for the period 3/11/03 to 12/08/05 plus the statutory interest on that total from the date of the decision up to the date of the entry of the judgment

The "Number of Days" column is the number of days between the "Beginning Date" and the "Ending Date"

Index No. 02/603315

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM, OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and WARNER MANSION FUND,

Plaintiffs,

-against-

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants.

JUDGMENT

CLEARY, GOTTLIEB, STEEN & HAMILTON LLP
Attorneys for Gryphon Domestic VI, LLC, OCM Opportunities Fund II, L.P., OCM Opportunities Fund III, L.P., Columbia/HCA Master Retirement Trust, and Gramercy Emerging Markets Fund

ONE LIBERTY PLAZA
BOROUGH OF MANHATTAN
NEW YORK, NY 10006
(212) 225-2000

COPY RECEIVED

THIS _____ DAY OF _____ 20_____

_____

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_____

_____1-6
FILED AND
DOCKETED

FEB 24 2006
AT 1:25 P

Cost disbursements waived

/s/ David Rush
David Rush

APPENDIX I

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN PART 39
Justice

GRYPHON DOMESTIC VI, LLC, et al.
Plaintiffs,
- v -
APP INTL. FIN. CO., D.V., et al.
Defendants.

INDEX NO. 603315/02
MOTION DATE _____
MOTION SEQ. NO. 20
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits . . .	_____
Answering Affidavits – Exhibits	_____
Replying Affidavits _____	_____

Cross-Motion: [ ] Yes [x] No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with accompanying memorandum decision.

23

Dated: May ~~16~~, 2005 /s/ HEF
Helen E. Freedman, *J.S.C.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: [X] FINAL DISPOSITION
[ ] NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS PART 39

Index No. 603315/02

----------X

GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM, OPPORTUNITIES FUND III, L.P., COLOMBIA/HCA, MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and WARNER MANSION FUND,

Plaintiffs/Judgment-Creditors,

-against-

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants/Judgment-Debtors.

----------X

Helen E. Freedman, J.

In their ongoing effort to enforce their unpaid judgment against foreign companies whose assets are located outside this country, the moving plaintiffs[1]

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[1] Five of the six plaintiffs join in this motion: Gryphon Domestic VI, LCC, OCM Opportunities Fund II, L.P., OCM Opportunities Fund III, L.P., ...*Continued*

apply pursuant to CPLR 5225(a) for a "turn-over" order directing the defendants[2] to deliver cash, stock certificates and other personal and real property to them. In opposition, the defendants claim that they were not properly served with this motion and also challenge it on the merits. They also cross-move for an order (1) vacating restraining notices that the plaintiffs purportedly served on them in September and October 2004 (the "Restraining Notices") and (2) deeming the record for this motion to include papers from earlier motions that addressed restraining notices that the plaintiffs served, their applications for contempt, and another "turn-over" proceeding that they brought against a third party. For the reasons set forth below, the motion is granted in part and the cross-motion is granted.

Background – At the outset, a significant new development in this case must be addressed. By order and decision entered May 17, 2005 (the

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Continued from previous page
Columbia/HCA Master Retirement Trust, and Gramercy Emerging Markets Fund. The sixth plaintiff, Warner Mansion Fund, did not move.

[2] APP International Finance Company, B.V. ("APP Finance"), P.T. Lontar Papyrus Pulp & Paper Industry ("P.T. Lontar"), Asia Pulp & Paper Company Ltd. ("Asia Pulp & Paper"), Indah Kiat International Finance Company B.V. ("Indah Kiat Finance"), and P.T. Indah Kiat Pulp & Paper Corporation ("Indah Kiat Pulp & Paper").

"Modifying Order"), the Appellate Division, First Department modified the judgment of this Court, entered April 13, 2004 (the "Judgment"), that the moving plaintiffs sought to enforce through this motion. After this Court had issued an order granting plaintiffs summary judgment, the Judgment was entered awarding the moving plaintiffs damages totaling about $354 million[3] for the defendants' defaults under three note issues: (1) the "Indah Kiat 02 Notes", issued by Indah Kiat Finance and guaranteed by Indah Kiat Pulp & Paper; (2) the "Indah Kiat 06 Notes", issued by Indah Kiat Finance and guaranteed by Indah Kiat Pulp & Paper; and (3) the "Lontar Notes", issued by APP Finance and guaranteed by both Asia Pulp & Paper and P.T. Lontar.

Upon the defendants' appeal, the First Department in the Modifying Order affirmed the award premised on the Indah Kiat 02 Notes, which totals about $ 109.4 million, but vacated the awards premised on the Lontar and Indah Kiat 06 Notes. With respect to those two issues, the Court held that the plaintiffs failed to prove that they had complied with certain pre-conditions to note-holders' lawsuits set forth in the governing indentures. Accordingly,

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[3] Non-moving plaintiff Warner Mansion Fund was granted judgment in the amount of $ 41 million. Also, by order dated January 7, 2005, the Court granted summary judgment to the trustee under the notes' indentures for the benefit of all holders.

the First Department remanded the action for further proceedings.

As a result of the Modifying Order, the judgments as against defendants APP Finance, P.T. Lontar, and Asia Pulp & Paper are vacated. The Judgment as against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, in respect of the Indah Kiat 02 Notes, remains. All of the moving plaintiffs hold Indah Kiat 02 Notes, and from here onward they will be referred to as the "Judgment Creditors"; Indah Kiat Finance and Indah Kiat Pulp & Paper will be referred to as the "Judgment Debtors".

The Judgment Debtors are foreign corporations who are not authorized to do business in New York, and who do not conduct any business or hold any property in the State. Indah Kiat Finance is a Dutch corporation whose principal place of business is in the Netherlands; Indah Kiat Pulp & Paper is an Indonesian company with its principal place of business in Indonesia. The Court has personal jurisdiction over the Judgment Debtors because they consented in the indenture governing the Indah Kiat 02 Notes (the "Indenture") to the non-exclusive jurisdiction of the state and federal courts in New York City, and appointed an agent to accept service of process in New York.

Restraining Notices – The cross-motion to vacate the Restraining Notices will be addressed first. The Restraining Notices issued against APP Finance,

P.T. Lontar and Asia Pulp & Paper are vacated because they are no longer judgment debtors subject to enforcement devices. The Judgment Debtors,[4] who are still subject to the Judgment, claim that the Judgment Creditors did not properly serve them, but the issue of service does not need to be reached. The Restraining Notices against the Judgment Debtors were ineffective in any event because their property is located outside of New York, and restraining notices issued by this Court do not reach property in other jurisdictions. *See ABKCO Indus. v. Apple Films, Inc.*, 39 N.Y.2d 670, 674-75 (1976); *Natl. Union Fire Ins. Co. of Pitts. v. Adv. Empl. Concepts, Inc.*, 269 A.D.2d 101, 101 (1st Dept. 2000); *see also* Dec. & Ord. dated Feb. 9, 2005 (holding the Judgment Debtors and others cannot be found in contempt for transferring assets located outside New York). Accordingly, the Restraining Notices are ineffective and are vacated pursuant to CPLR 5240.

Delivery orders – Post-judgment enforcement orders that direct a judgment debtor to "turn over" its property to the judgment creditor are governed by CPLR § 5225(a), which provides as follows:

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[4] As noted, the parties submitted this motion after the Judgment was entered but before the First Department modified it, so they joined in opposing the motion and cross-moving for relief in their capacity as judgment debtors. The motion and cross-motion are moot insofar as they pertain to APP Finance, P.T. Lontar, and Asia Pulp & Paper.

> (a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor shall pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it is sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

Again, APP Finance, P.T. Lontar and Asia Pulp & Paper are not judgment debtors and are immune from a delivery order. The Judgment Debtors oppose this turnover motion on a number of grounds. First, they contend that this Court cannot compel them to turn over property located outside of New York. However, inasmuch as the Court has obtained personal jurisdiction over the Judgment Debtors and the Judgment has been entered against them in this action, the Court can order them to satisfy it by delivering their property, regardless of its location. *See Starbare II, L. P. v. Sloan*, 216 A.D.2d 238, 239 (1st Dept. 1995) (directing judgment debtor to turn over property in New Jersey); *In re Gaming Lottery Secs. Litig.*, N.Y.L.J., Feb. 20, 2001 at 39, col. 4

(S.D.N.Y. 2001) (*relying on Starbare II, L. P.* and directing turn-over of property in Scotland).

Second, the Judgment Debtors claim that the Judgment Creditors never properly served them with notice of the turnover motion pursuant to CPLR 5225(a), which requires that "[n]otice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested." In September and October 2004, the Judgment Creditors made at least ten separate attempts to serve the Judgment Debtors. Their methods included (1) personal delivery notice to their representatives in The Netherlands and Indonesia pursuant to CPLR 311(a), (2) delivering notice to the foreign business addresses of the Judgment Debtors by international registered mail, first class mail, and certified mail, (3) twice mailing notice to the New York City offices of CT Corporation ("CT Corp.") in its alleged capacity as the Judgment Debtors' agent for service, and (4) serving the Secretary of State of New York and taking other steps to effect service pursuant to BCL § 307.

At least one of those methods constituted good service on the Judgment Debtors, namely mailing the notice of motion by certified mail, return receipt requested, in October 2004 to CT Corp., while mailing a copy to the Judgment Debtors at their business addresses. The Judgment Debtors were contractually obligated to accept service by that method. Parties to a contract may waive their right to statutory service and agree to some other form of notice. *See Pohlers v. Exeter Mfg. Co.*, 293 N.Y. 274,

278-79 (1944); *Natl. Equip. Rental, Ltd. v. Dec-Wood Corp.*, 51 Misc.2d 999, 1000 (App. Term, 1st Dept. 1966). For alternative service under a contract, parties can designate agents to accept process on their behalf. *Natl. Equip. Rental, Ltd.*, 51 Misc.2d at 1000; *see also Comprehensive Merchandising Catalogs, Inc. v. Madison Sales Corp.*, 521 F.2d 1210, 1212 (7th Cir. 1975)(applying New York law). In this case, the Indenture contained provision under which the Judgment Debtors submitted to the jurisdiction of "any New York State or United States Federal court sitting in New York City" for claims arising from the Indenture or the Indah Kiat 02 Notes, and appointed CT Corp. as their agents for service:

> [a]s long as any of the Notes remain [o]utstanding, each [Judgment Debtor] will at all times have an authorized agent in New York City, upon whom process may be served in any legal action or proceeding arising out of or relating to this Indenture or any Note . . . . Service of process upon such agent and written notice of such service mailed or delivered to [a Judgment Debtor] shall be deemed in every respect effective service of process upon the [Judgment Debtor], in any such legal action or proceeding. Each [Judgment Debtor] hereby irrevocably appoints CT Corporation as its agent for such purpose, and covenants and agrees that service of process in any suit, action or proceeding may be made upon the [New York City] office of [CT Corp.] Notwithstanding the foregoing, [a Judgment Debtor] may, with prior written notice to the

> [Indenture trustee], terminate the appointment of CT Corporation and appoint another agent for the above purposes so that the [judgment debtor] shall at all times have an agent for the above purpose in New York City.

The Judgment Creditors complied with the service requirements under the Indenture by sending notice of the turnover motion to CT Corp. by certified mail, return receipt requested and mailing copies to the Judgment Debtors at their business addresses.

In opposition, the Judgment Debtors acknowledge that they knew about the turnover motion through the Judgment Creditors' numerous attempts to serve notice, but contend that service was defective because the Judgment Debtors had "discharged" CT Corp. shortly after the Judgment Creditors commenced this action in September 2002. When the Judgment Creditors served CT Corp. in October 2004, the Judgment Debtors point out, they already knew that CT Corp. had been terminated as agent two years earlier; moreover, after they received the notices of the motion, CT Corp. confirmed by letter to the Judgment Debtors that it had been discharged. However, the Judgment Creditors could still made good service by mailing notice to CT Corp., because the Judgment Debtors breached their obligations under the Indenture by failing to inform its trustee in advance that they were discharging CT Corp., and by failing to immediately name a replacement agent. As a result, the appointment of CT Corp. remained irrevocable under the Indenture.

As a third basis to oppose the turnover motion, the Judgment Debtors claim that the Judgment Creditors failed to submit proof that they are "in possession or custody of money or other personal property in which [they have] an interest," pursuant to CPLR 5225(a). The Judgment Creditors seek an order directing the Judgment Debtors to turn over (1) money held in their accounts with foreign banks; (2) the paper, pulp, and packaging mills that Indah Kiat Pulp & Paper owns in Indonesia, (3) the stock certificates for the Judgment Debtors' alleged wholly owned subsidiaries and "related entities," and (4) various moveable assets, insurance proceeds, and supply contracts relating to the Indonesian mills.

Some of that property lies outside the scope of a delivery order pursuant to CPLR 5225(a). The money in the Judgment Debtors' foreign bank accounts is the banks' property; the Judgment Debtors only possess the banks' indebtedness to them for the money. *See in re Delaney*, 256 N.Y. 315, 320-21 (1931). To reach the bank deposits, the Judgment Creditors would have to bring a special proceeding under CPLR 5225(b) naming the banks as respondents. Also, the Judgment Debtors' mills and other real property in Indonesia are exempt, inasmuch as delivery orders under CPLR 5225 can only apply to money or personal property.

The Judgment Creditors also seek property which does not belong to the Judgment Debtors, but instead belongs to their subsidiaries and other corporate affiliates. A delivery order could reach shares of affiliates that the Judgment Debtors own and possess, but it would not apply to the affiliates'

shares of third companies. The Judgment Creditors have not shown any grounds for disregarding the corporate form and holding subsidiaries and other affiliates of the Judgment Debtors liable.

However, the Judgment Creditors have made a *prima facie* showing that P.T. Indah Kiat Pulp & Paper possesses stock certificates for a number of their subsidiaries and affiliates. As evidence, the Judgment Creditors submit (1) a corporate organization chart produced by a non-party in response to an information subpoena and (2) consolidated financial statements and SEC registration Statements. The Judgment Debtors wrongly claim that the Judgment Creditors' evidence is inadequate, but they never deny that P.T. Indah Kiat Pulp & Paper owns the stock certificates.

Finally, the Judgment Debtors oppose a turnover order by invoking principles of international comity. They claim that the order would jeopardize an ongoing restructuring by some of the defendants of billions of dollars of their indebtedness to other creditors, a number of which are the export credit agencies of foreign countries. However, the Judgment Debtors offer no explanation why an order directing them to satisfy the judgment in this action would disrupt their restructuring of different indebtedness to other creditors.

The Judgment Debtors also contend that ordering them to deliver money or personal property located in Indonesia would conflict with anti-suit injunctions issued by that country's courts. As evidence, they submit the affidavit of Marx Andryan,

an Indonesian attorney acting as counsel for Indah Kiat Pulp & Paper and some of its affiliates, who states that the Indonesian courts have issued orders "which effectively prohibit the [Judgment Creditors] from prosecuting any enforcement or payment lawsuit or proceeding relating to the subject Indentures and accessory [documents] (including, the Notes) or taking any step with respect thereto." But an order by a foreign court that enjoins and restrains the parties in proceedings in that court does not affect the courts of this state and their proceedings. *Dobson v. Pearce*, 12 N.Y. 156 (1854); *Canadian Imperial Bank of Com. v. Pamukbank Tas*, 166 Misc.2d 647 (Sup. Ct. N.Y. Co. 1994). Accordingly, the Indonesian courts' rulings do not bar this Court from ordering the Judgment Debtors to turn over their property in Indonesia to satisfy the Judgment of this Court. However, inasmuch as the Judgment Debtors apparently can satisfy the Judgment by delivering assets located outside of Indonesia[5], the turn-over order is stayed insofar as it pertains to property currently in that country.

That branch of the cross-motion seeking to expand the record for this motion to include papers for earlier motions is denied. The present record suffices.

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[5] For example, the business offices of Indah Kiat Finance are located in the Netherlands.

In sum, the restraining orders are vacated, but the motion for a delivery order is granted to the extent that the Judgment Debtors are directed to either (1) pay the Judgment Creditors enough money to satisfy the Judgment in respect to the Indah Kiat 02 Notes or (2) deliver to a designated sheriff stock certificates of equivalent value that, as of this date, are located outside of Indonesia. In furtherance of the delivery order, the Judgment Debtors are enjoined from transferring their assets into Indonesia from this date until the Judgment is satisfied.

Settle order.

Dated: May 23, 2005 ENTER:

/s/ HE Freedman
Helen E. Freedman, J.S.C.

APPENDIX J

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN PART 39
Justice

Gryphon Dom. VI, LCC,
Plaintiff,

- v -

APP Intl. Fin. Co., B.V.
Defendant

INDEX NO. 603315/02

MOTION DATE _____

MOTION SEQ. NO. 035

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits____	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: ☐ Yes ☒ No

FILED

MAR 16 2006

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

The post-judgment motions numbered # 034 and # 035 are consolidated for joint disposition. They relate to the "turnover" order of this Court entered August 23, 2005 (the "Turnover Order"), which it issued pursuant to its decision dated May 23, 2005 (the "Decision"). For the sake of concision, familiarity with the Turnover Order and the Decision is assumed, and defined terms in the Decision will have the same meaning here unless otherwise indicated.

Contempt motion – In motion # 035, the Judgment Creditors move for an order holding defendants Indah Kiat International Finance Company, B.V. and P.T. Indah Kiat Pulp & Paper Corporation (the "Judgment Debtors") in civil contempt for disobeying the direction in the Turnover Order that "if they do not pay the Judgment Creditors enough money to satisfy the Judgment in the amount of $68,179,703.97 in respect to the Indah Kiat 02 Notes,

then, within [30 days after being served with the Turnover Order], they must deliver to a New York County sheriff, stock certificates of equivalent value that, as of May 23, 2005, were located outside of Indonesia." The Judgment Creditors also seek to have the Judgment Debtors held in contempt of another order dated and entered April 27, 2005 (the "Escrow Order"), which directed that $400 million "be held in escrow" by the Judgment Debtors and their affiliates.

Plaintiffs' motion is denied. The Turnover Order directed the Judgment Debtors to deliver the stock certificates of subsidiaries and affiliates of P.T. Indah Kiat Pulp & Paper, based upon the plaintiffs' initial showing that P.T. Indah Kiat Pulp & Paper possessed them. However, in opposition to this motion, the Judgment Debtors submit the affidavit of Ferry Siswojo Djongianto, the Director of the Corporate and Legal Affairs Division for the group of companies that includes all of the defendants. Mr. Djongianto states that the Judgment Debtors "do not (and did not) own and possess any stock certificates that were located outside of Indonesia as of May 23, 2005 or at any time since then." Since the Turnover Order did not require the Judgment Debtors to deliver certificates located in Indonesia, in view of the anti-suit injunctions issued by the courts of that country, the Judgment Debtors did not violate this Court's order.

Plaintiffs also argue that the Judgment Debtors violated the Turnover Order by failing to pay the Judgment. However, the failure to pay a money judgment itself is not punishable as a contempt of

court. *See Wides v. Wides*, 96 A.D.2d 592, 593 (2d Dept. 1983); *see also* CPLR 5104 (a contempt penalty is unavailable for a judgment that can be enforced by execution).

Finally, the Judgment Debtors are not in contempt of the Escrow Order, which the Court issued when the plaintiffs moved (by order to show cause) for an order restraining the Judgment Debtors from restructuring their debt to third parties. The parties dispute the exact meaning of the Court's directive, whether the Judgment Debtors ever had $400 million to put in escrow, and whether the escrow order continued past the return date of the plaintiffs' order to show cause, but in any event the order expired at the latest when the Decision was issued: in their order to show cause, the plaintiffs sought an order "preliminarily enjoining and restraining Judgment Debtors . . . pending this Court's decision on the pending turnover motion by Judgment Creditors."

Motion to vacate injunction – In motion # 034, the Judgment Debtors move for an order vacating the direction in the Turnover Order that "[i]n furtherance of the . . . delivery order, the Judgment Debtors are ENJOINED from transferring their assets into Indonesia from May 23, 2005 until the Judgment is satisfied . . . ." On reconsideration, this directive appears problematic because (1) the plaintiffs did not apply for this broad injunctive relief, *see Char ? v. Intl. Inc.*, 15 A.D.3d 518, 519 (2d Dept. 2005), and (2) New York courts cannot restrain transfers of property located outside of the state, *see Natl. Union Fire Ins. Co. of Pitts. v. Adv. Empl.*

Concepts, Inc., 269 A.D.2d 101, 101 (1st Dept. 2000). Accordingly, the Judgment Debtors' motion is granted.

ORDERED that the motion by plaintiffs for a holding of contempt is denied, and it is further

ORDERED that the motion by defendants is granted, and it is further

ORDERED that the directive labeled "(B)" on the fifth page of the order of the Court entered August 23, 2005 is vacated.

Dated: March 13, 2006 /s/ HEF
Helen E. Freedman,
J.S.C.

Check one: ☒ FINAL DISPOSITION
☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

FILED

MAR 16 2006

NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX K

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 02/6013315
(IAS Part 39; Freedman. J.)

----------X

GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM OPPORTUNITIES FUND III L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and WARNER MANSION FUND,

Plaintiffs/Judgment Creditors,

-against-

APP INTERNATIONAL FINANCE COMPANY, BV., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, and ASIA PULP & PAPER COMPANY LTD.,

Defendants,

INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants/Judgment Debtors.

----------X

ORDER

WHEREAS, plaintiffs/judgment creditors Gryphon Domestic VI, LLC, OCM Opportunities Fund II, L.P., OCM Opportunities Fund III, L.P., Columbia/HCA Master Retirement Trust, and Gramercy Emerging Markets Fund ("Plaintiffs" or "Judgment Creditors"), having moved by notice of motion dated September 8, 2004, pursuant to C.P.L.R. §§ 5222 and 5225, for a "turnover" order, and Judgment Creditors having submitted the affidavit of Jay S. Auslander, counsel to Judgment Creditors, sworn to September 8, 2004, and the exhibits attached to that affidavit, all in support of the motion (Motion Sequence No. 20); and whereas Judgment Creditors thereafter having served and filed an amended notice of motion, dated October 21, 2004 (the "Motion"), and the accompanying affidavit of Jay S. Auslander, counsel to Judgment Creditors, sworn to October 21, 2004, and the exhibits attached to that affidavit, also pursuant to C.P.L.R. §§ 5222 and 5225, seeking an order directing APP International Finance Company, RV., P.T. Lontar Papyrus Pulp & Paper Industry, Asia Pulp & Paper Company Ltd., Indah Kiat International Finance Company B.V., and P.T. Indah Kiat Pulp & Paper Corporation ("Defendants"): (i) to pay over and deliver to Siller Wilk LLP, as attorneys for Judgment Creditors, the sum of $353,654,542.75 (the "Judgment Amount") from all sums of money and all personal property in their possession and restrained in accordance with restraining notices issued; and (ii) to the extent there is not sufficient money to satisfy the Judgment Amount, to deliver to the Sheriff of the County of New York all such personal and real

property sufficient and necessary to satisfy the Judgment Amount; and

WHEREAS, Defendants, having opposed the Motion by their counsel, Schnader Harrison Segal & Lewis LLP, and having cross-moved by notice of cross-motion dated October 22, 2004 (the "Cross-Motion"), together with the accompanying affirmation of Kenneth R. Puhala, counsel to Defendants, dated October 22, 2004, and the exhibits attached to that affidavit, and the affidavit of Ferry Siswojo Djongianto, sworn to on October 21, 2004, in support of the Cross-Motion and in opposition to the Motion, for an order: (i) vacating or declaring ineffective the restraining notices with which Judgment Creditors served defendants pursuant to C.P.L.R. § 5222; (ii) treating all of the motion papers submitted in connection with "Motion Sequence" Nos. 12 through 14, "Motion Sequence" No. 18, and the Motion as part of the record for each motion; and (iii) striking the "Amended Notice of Motion" as ineffective; and

WHEREAS, Judgment Creditors, having submitted the reply and opposition affirmation of Jay S. Auslander, counsel to Judgment Creditors, dated November 16, 2004, and the exhibits attached to that affirmation; the reply and opposition affirmation of Natalie Shkolnik, counsel to Judgment Creditors, dated November 12, 2004, and the exhibits attached to that affirmation; the affidavit of Rahmat Bastian, counsel to Judgment Creditors in Indonesia, sworn to November 10, 2004; the affidavit of Riziyadi Darmowiyoto, counsel to Judgment Creditors in Indonesia, sworn to November 12, 2004; and the

affidavit of Riziyadi Darmowiyoto, counsel to Judgment Creditors in Indonesia, sworn to November 10, 2004, all in further support of the Motion and in opposition to the Cross-Motion; and

WHEREAS, Defendants, having submitted the reply affidavit of Ferry Siswojo Djongianto, sworn to December 7, 2004, and the reply affidavit of Marx Andryan, sworn to December 6, 2004, both in further support of the Cross-Motion; and

WHEREAS, Judgment Creditors, having submitted the affirmation of Stephen D. Hoffman, counsel to Judgment Creditors, dated January 4, 2004, together with the exhibits attached to that affidavit, in further support of the Motion; and

WHEREAS, on December 23, 2004, Stephen D. Hoffman, counsel for Judgment Creditors, having appeared on behalf of Judgment Creditors in support of the Motion and in opposition to the Cross-Motion, and Kenneth R. Puhala, counsel for Defendants, having appeared on behalf of defendants in opposition to the Motion and in support of the Cross-Motion; and

WHEREAS, the Appellate Division, First Department, by order and decision dated and entered May 17, 2005, (i) modified the judgment of this Court, entered April 13, 2004, (the "Original Judgment") vacating the judgment as against defendants APP International Finance Company, B.V., Asia Pulp & Paper Company Ltd., and P.T. Lontar Papyrus Pulp & Paper Industry; and (ii) affirmed the judgment of this Court as against defendants Indah Kiat International Finance

Company B.V. and P.T. Indah Kiat Pulp & Paper Corporation (collectively the "Judgment Debtors"), which award totals $109,412,888.33; and

WHEREAS, the judgment as modified by the Appellate Division, comprises $68,179,703.97 due and owing to Judgment Creditors ("the Modified Judgment") and $41,233,184.36 due and owing to plaintiff Warner Mansion Fund (which is not represented by counsel for Judgment Creditors and which has not participated in the prosecution or defense of either the Motion or Cross-Motion); and

WHEREAS, the Motion and Cross-Motion are moot insofar as they concern defendants APP International Finance Company, B.V., P.T. Lontar Papyrus Pulp & Paper Industry, and Asia Pulp & Paper Company Ltd., against which defendants the Original Judgment has been vacated; and

WHEREAS, this Court, after due deliberation, having issued a memorandum decision dated May 23, 2005 (the "Decision"), granting in part and denying in part the Motion to the extent set forth in the decretal paragraphs set forth below; and granting in part and denying in part the Cross-Motion to the extent set forth in the decretal paragraphs set forth below; and directing that an order be settled;

NOW, THEREFORE, it is hereby

ORDERED that:

(A) Judgment Creditors' motion for a delivery order is GRANTED to the extent that the

Judgment Debtors are directed that if they do not pay the Judgment Creditors enough money to satisfy the Judgment in the amount of $68,179,703.97 in respect to the Indah Kiat 02 Notes, then, within thirty (30) days from service of notice of entry of this Order, they must deliver to a New York County sheriff, stock certificates of equivalent value that, as of May 23, 2005, were located outside of Indonesia; and

(B) In furtherance of the foregoing delivery order, the Judgment Debtors are ENJOINED from transferring their assets into Indonesia from May 23, 2005 until the Judgment is satisfied; and

(C) Defendants' cross-motion to vacate the restraining notices issued against Defendants is GRANTED; and

(D) Defendants' cross-motion to strike the Amended Notice of Motion is DENIED; and

(E) That branch of Defendants' cross-motion seeking to expand the record for this motion to include papers from earlier motions is DENIED.

ENTER:

/s/ HEF
J.S.C.

☐ DO NOT POST

FILED
AUG 23, 2005
NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX L

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT:
Hon. HELEN E. FREEDMAN PART 39
Justice

Gryphon Domestic VI, LLP
Plaintiff,

- v -

APP Intl. Fin. Co., B.V.,
Defendant

INDEX NO. 603315/02

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits____	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

CROSS-MOTION: ☐ Yes ☒ No

Motion sequence ## 002 and 003 are consolidated for joint disposition.

In this action for monies due under a series of promissory notes in the principal amount of approximately $250 million (the "Notes"), plaintiffs now move for summary judgment (sequence #003), and for a stay of discovery until the summary judgment motion is decided (sequence #002). Defendants oppose summary judgment and seek further discovery on the ground that plaintiffs may lack legal capacity to sue under the three indenture agreements (the "Indentures") that govern the Notes. Each Indenture provides that "noteholders" may sue under the Notes for non-payment only if (1) holders of at least 25% of the principal of outstanding Notes ask the Indenture's trustee to commence a lawsuit and (2) the trustee fails to begin an action within 30 days.

The original plaintiffs to this action, comprised of General Electric Capital Corporation ("GECC"), Gramercy Advisors L.L.C. ("Gramercy") and Oaktree Capital Management, LLC ("Oaktree"), lacked capacity to sue. Upon defendants' motion to dismiss to complaint, the Court found in a order and decision dated February 4, 2003, that plaintiffs lacked capacity to sue under the Indentures, because GECC held fewer than 25% of the principal amount of the Notes, and Gramercy and Oaktree did not hold any Notes, but rather managed the investment accounts and mutual funds of third-party Note-holders. Inasmuch as Gramercy and Oaktree lacked capacity

to sue in their own names, this Court dismissed the complaint, but allowed plaintiffs to re-plead to add the proper plaintiffs. Plaintiffs served an Amended Complaint on March 11, 2003 which deleted Gramercy and Oaktree as plaintiffs and added five new plaintiffs (the "New Plaintiffs"). At present the plaintiffs consist of the New Plaintiffs and GECC.

Summary judgment is now granted for Plaintiffs. To prove that they are beneficial owners of the Notes, plaintiffs submit account statements, their own affidavits and those of third parties that comprise *prima facie* evidence of ownership. They also submit evidence of defendants' non-payment of monies due under the Notes. Since the moving plaintiffs have made a *prima facie* showing that they are entitled to judgment, the burden shifts to defendants, who must raise a triable issue of fact to defeat summary judgment. *See Winegrad v. N.Y. Univ. Med Ctr.*, 64 N.Y.2d 851, 853 (1980).

Here defendants' submissions do not suffice. In opposition, defendants submit the affidavit of Robert C. Apfel, president of Bondholder Communications Group, which provides governance services for corporations. Apfel states that he is at times called upon to identify all of the holders of a clients' securities as of a particular date in connection with "voting, consent solicitations, bankruptcy balloting and tender offers." Apfel claims that plaintiffs did not follow the procedures he uses to ascertain beneficial ownership and identifies alleged "gaps" in the documents that plaintiffs submitted.

But Apfel never denies that plaintiffs are the Notes' owners, or even state that it is likely or probable that they are not. Moreover, the unchallenged affidavits that plaintiffs submit address the complained-of gaps in the documentary record. Finally, the procedures that Apfel would use to identify the entire universe of Note-holders have no bearing on whether the plaintiffs have established that they own the particular Notes in question.

Defendants also oppose summary judgment on the ground that they need further discovery pursuant to CPLR 3212(f). But plaintiffs already have provided defendants with considerable disclosure about the ownership of the Notes, which would have enable defendants to raise an issue of fact if it existed. Defendants' speculation that further discovery might unearth a triable issue does not justify a "fishing expedition." *See Steinberg v. Abdul*, 230 A.D.2d 633, 633 (1st Dept. 1996) (rejecting CPLR 3212(f) disclosure request based upon the "mere hope" that disclosure would defeat summary judgment.)

Accordingly, plaintiffs' motion for summary judgment is granted. Plaintiffs' motion for a stay of discovery is moot. Settle order.

Dated: October 20, 2003 /s/ HEF
J.S.C.

Check one: [X] FINAL DISPOSITION
[ ] NON-FINAL DISPOSITION

APPENDIX M

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: _____ PART ____
Justice

0603315/2002
GRYPHON DOMESTIC VI, LLC,
vs
APP INTERNATIONAL FINANCE CO.

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

SEQ 7

MOTION CAL. NO. _____

REARGUMENT/
RECONSIDERATION

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits____	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

Motion to Revise Order: granted

Order of Jan. 15, 2004 is vacated and attached order shall be entered.

FILED

MAR 18 2004

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/18/04 /s/ HEF
J.S.C.

Check one: ☐ FINAL DISPOSITION
☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

At IAS Part 39 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, New York on the __ of March 2004.

PRESENT:

HON. HELEN E. FREEDMAN, JUSTICE

Index No.02/603315

---------- X

GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and GENERAL ELECTRIC CAPITAL CORPORATION,

Plaintiffs,

- against -

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants.

---------- X

[~~PROPOSED~~] REVISED ORDER

FILED

MAR 18 2004

NEW YORK
COUNTY CLERK'S OFFICE

A motion having been made by plaintiffs on July 18, 2003, and having duly come on to be heard on July 24, 2003, for an order granting summary judgment,

NOW, upon the reading and filing of the Notice of Motion for Summary Judgment dated May 28, 2003 (the "Summary Judgment Motion"), the Affidavits of Sean Caley, sworn to May 5, 2003, Robert Karsch of Deutsche Bank Trust Company Americas, sworn to May 7, 2003, Timothy Sandell, sworn to May 22, 2003, Robert S. Koenigsberger of Gramercy Emerging Markets Fund ("GEMF"), sworn to May 22, 2003, Gloria Noh on behalf of Gryphon Domestic VI, LLC ("Gryphon"), sworn to May 23, 2003, Gloria Noh of OCM Opportunities Fund II, L.P. ("OCM II"), sworn to May 23, 2003, Gloria Noh of OCM Opportunities Fund III, L.P. ("OCM III"), sworn to May 23, 2003, Gloria Noh on behalf of Columbia/HCA Trust ("Columbia/HCA Trust"), sworn to May 23, 2003, William H. Freilich of Bear Stearns, sworn to May 23, 2003, Ricardo B. Silva of General Electric Capital Corporation ("GECC"), sworn to May 28, 2003, Janet E. Pickering of BNY Western Trust Company, sworn to May 28, 2003, First Affidavit of Stephen C. Dunn of JPMorgan Chase, sworn to May 28, 2003, Second Affidavit of Stephen C. Dunn of JPMorgan Chase, sworn to May 28, 2003, the Affirmation of David Rush in

Support of the Motion for Summary Judgment by Plaintiffs, dated May 28, 2003, the Affidavits in Opposition to Plaintiffs' Motion for Summary Judgment of Robert Apfel of Bondholder Communication Group, sworn to July 3, 2003, Ferry Siswojo Djongianto of Asia Pulp & Paper Company Ltd. ("Asia Pulp & Paper"), sworn to July 3, 2003, the Affirmation of David G. Hille in Opposition to Plaintiffs' Motion for Summary Judgment, dated July 2, 2003, the Reply Affidavits of Brian Berman of Gryphon, sworn to July 15, 2003, Brian Berman of OCM II, sworn to July 15, 2003, Brian Berman of OCM III, sworn to July 15, 2003, Brian Berman on behalf of Columbia/HCA Trust, sworn to July 15, 2003, Robert S. Koenigsberger of GEMF, sworn to July 16, 2003, Ricardo B. Silva of GECC, sworn to July 16, 2003, Robert T. Rauch on behalf of GEMF, sworn to July 15, 2003, and the Affirmation of Jennifer Brown in Support of the Motion for Summary Judgment by Plaintiffs, dated July 16, 2003, and the attached exhibits; and upon all prior pleadings and proceedings herein (the "Summary Judgment Record"), and the matter having been orally argued on July 24, 2003, and after due deliberation this Court having rendered a decision dated October 20, 2003; and upon the reading and filing of the Notice of Motion to Resettle Order or in the Alternative for Leave to Reargue dated February 20, 2004, the Affirmation of Wesley Kelman, dated February 20, 2004, and the Affidavit of Rahmat Bastian, sworn to February 20, 2004, and the attached exhibits, and

NOW, on motion of Cleary, Gottlieb, Steen & Hamilton, attorneys for GEMF, Gryphon, OCM II, OCM III, and Columbia/HCA Trust, it is

ORDERED that the Order of January 15, 2004 is vacated

ORDERED that this Order supersedes the order of this Court in the above-captioned case dated January 15, 2004, and entered January 30, 2004; and it is further

ORDERED that the Summary Judgment Motion against APP International Finance Company, B.V. ("APP Finance"), P.T. Lontar Papyrus Pulp & Paper Industry ("Lontar"), Asia Pulp & Paper, Indah Kiat International Finance Company B.V. ("Indah Kiat Finance"), and P.T. Indah Kiat Pulp & Paper Corporation ("Indah Kiat Pulp & Paper") (collectively, the "Defendants") is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Gryphon based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $9,683,695, based on the default of the 11¾% guaranteed secured notes issued by APP Finance and guaranteed by Lontar and Asia Pulp & Paper, due in 2005 (the "Lontar Notes");

Plaintiff	Principal	Interest
Gryphon	$7,335,000	$2,348,695
Total	Date of Default	
$9,683,695	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $1,875,949, based on the default of the 11⅞% guaranteed secured notes issued by Indah Kiat Finance and guaranteed by Indah Kiat Pulp & Paper, due in 2002 (the "Indah Kiat 02 Notes"):

Plaintiff	Principal	Interest
Gryphon	$1,450,000	$425,949
Total	Date of Default	
$1,875,949	June 22, 2001	

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of OCM II based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $72,406,578, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
OCM II	$54,845,000	$17,561,578
Total	Date of Default	
$72,406,578	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $8,875,179, based on the default of the Indah Kiat 02 Notes:

Plaintiff	Principal	Interest
OCM II	$6,860,000	$2,015,179
Total	Date of Default	
$8,875,179	June 22, 2001	

and (C) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $25,402,604, based on the default of the 12½% guaranteed secured notes issued by Indah Kiat Finance and guaranteed by Indah Kiat Pulp & Paper, due in 2006 (the "Indah Kiat 06 Notes"):

Plaintiff	Principal	Interest
OCM II	$19,380,000	$6,022,604
Total	Date of Default	
$25,402,604	June 22, 2001	

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of OCM III based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $52,649,728, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
OCM III	$39,880,000	$12,769,728
Total	Date of Default	
$52,649,728	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $17,077,603, based on the default of the Indah Kiat 02 Notes:

Plaintiff	Principal	Interest
OCM III	$13,200,000	$3,877,603
Total	Date of Default	
$17,077,603	June 22, 2001	

and (C) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $24,052,517, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
OCM III	$18,350,000	$5,702,517

Total	Date of Default
$24,052,517	June 22, 2001

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Columbia/HCA Trust based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $2,699,817, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
Columbia/HCA Trust	$2,045,000	$654,817

Total	Date of Default
$2,699,817	April 9, 2001

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $181,126, based on the following default of the Indah Kiat 02 Notes:

Plaintiff	Principal	Interest
Columbia/HCA Trust	$140,000	$41,126

Total	Date of Default
$181,126	June 22, 2001

and (C) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $696,016, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
Columbia/HCA Trust	$531,000	$165,016

Total	Date of Default
$696,016	June 22, 2001

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of GEMF based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants APP Finance, Lontar, and Asia Pulp & Paper, jointly and severally, in the amount of $23,463,982, based on the default of the Lontar Notes:

Plaintiff	Principal	Interest
GEMF	$17,773,000	$5,690,982
Total	Date of Default	
$23,463,982	April 9, 2001	

and (B) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $34,670,122, based on the default of the Indah Kiat 02 Notes:

Plaintiff	Principal	Interest
GEMF	$26,798,000	$7,872,122
Total	Date of Default	
$34,670,122	June 22, 2001	

and (C) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $51,577,248, based on the default of the Indah Kiat 06 Notes:

Plaintiff	Principal	Interest
GEMF	$39,349,000	$12,228,248
Total	Date of Default	
$51,577,248	June 22, 2001	

and it is further

ORDERED that the Clerk is directed to enter judgment in favor of GECC based on the principal and interest established in the Summary Judgment Record as follows:

(A) against defendants Indah Kiat Finance and Indah Kiat Pulp & Paper, jointly and severally, in the amount of $37,907,104, based on the default of the Indah Kiat 02 Notes:

Plaintiff	Principal	Interest
GECC	$29,300,000	$8,607,104

Total	Date of Default
$37,907,104	June 22, 2001

and it is further

ORDERED that Plaintiffs shall turn over any amounts paid or recovered under this Order to the respective Trustees of the above-referenced note offerings and the accompanying indentures for the equal, ratable and common benefit of the noteholders of the series of notes at issue and that notwithstanding such turn over and distribution, Plaintiffs are barred from commencing further actions against Defendants seeking further judgments for any amounts under the above-referenced note offerings and the accompanying indentures, provided that nothing in this Order shall prevent Plaintiffs from bringing actions to recover amounts awarded under this Order, including but not limited to proceedings based on their respective amounts awarded under this Order against

Defendants in Indonesia or in other jurisdictions that require de novo proceedings as a predicate to enforcing a foreign judgment, and that this Order is without prejudice to the plaintiffs' obligations or rights with respect to their respective share in any equal and ratable distribution pursuant to the above-referenced notes and the accompanying indentures; provided, however, that under no circumstances shall plaintiffs retain for their own benefit with respect to their beneficial ownership of the notes more than the amounts awarded hereunder; and it is further

ORDERED that the Clerk is directed to grant plaintiffs interest as prayed for, allowable by law at the statutory rate of 9% per annum from March 11, 2003 (the date of the Amended Complaint), until the date of entry of judgment, as calculated by the Clerk, and thereafter at the same statutory rate of 9% per annum together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: 3/18/04

ENTER:

/s/ HEF
J.S.C.

FILED

MAR 18 2004

NEW YORK
COUNTY CLERK'S OFFICE

APPENDIX N

Index No. 02/603315

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and GENERAL ELECTRIC CAPITAL CORPORATION,

Plaintiffs,

-against-

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants.

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JUDGMENT

A motion having been made by plaintiffs on July 18, 2003, and having duly come on to be heard on July 24, 2003, for an order granting summary judgment, and after due deliberation this Court

having rendered a memorandum decision dated October 20, 2003 granting plaintiffs' motion for summary judgment and directing settlement of an Order, and issuing an Order directing entry of judgment, dated and entered on March 18, 2004, and as part of the Order, it was ordered that plaintiffs shall turn over any amounts paid or recovered under the Order to the respective Trustees of the below-referenced note offerings and the accompanying indentures for the equal, ratable and common benefit of the noteholders of the series of notes at issue and that notwithstanding such turn over and distribution, plaintiffs are barred from commencing further actions against defendants seeking further judgments for any amounts under the below-referenced note offerings and the accompanying indentures, provided that nothing in the Order shall prevent plaintiffs from bringing actions to recover amounts awarded under the Order, including but not limited to proceedings based on their respective amounts awarded under the Order against defendants in Indonesia or in other jurisdictions that require de novo proceedings as a predicate to enforcing a foreign judgment, and that the Order is without prejudice to the plaintiffs' obligations or rights with respect to their respective share in any equal and ratable distribution pursuant to the below-referenced notes and the accompanying indentures; provided, however, that under no circumstances shall plaintiffs retain for their own benefit with respect to their beneficial ownership of the notes more than the amounts awarded under the Order,

NOW, on motion of Cleary, Gottlieb Steen & Hamilton, attorneys for Gramercy Emerging Markets Fund, Gryphon Domestic VI, LLC, OCM Opportunities Fund II, L.P., OCM Opportunities Fund III, L.P., and Columbia/HCA Master Retirement Trust, it is

[VACATED] ADJUDGED that plaintiff Gryphon Domestic VI, LLC (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (last known mailing address 118 Pioneer Road, Singapore 068805, Republic of Singapore), P.T. Lontar Papyrus Pulp & Paper Industry (last known mailing address Gedung B. Km. 8, Jalan Raya Serpong, Tangerang, West Java, Republic of Indonesia), and Asia Pulp & Paper Company Ltd. (last known mailing address 3 Shenton Way, #25-01 Shenton House, Singapore 068805, Republic of Singapore), jointly and severally, the sum of $9,683,695 plus interest in the amount of $841,073.53, for a total judgment of $10,524,768.53 based on the default of the 11¾% guaranteed secured notes issued by APP International Finance Company, B.V. and guaranteed by P.T. Lontar Papyrus Pulp & Paper Industry and Asia Pulp & Paper Company Ltd., due in 2005 (the "Lontar Notes"), and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Gryphon Domestic VI, LLC (address above) recover from Indah Kiat International Finance Company B.V. (last known mailing address c/o MeesPierson Trust B.V., Rokin

55, 1012 KK Amsterdam, the Netherlands) and P.T. Indah Kiat Pulp & Paper Corporation (last known mailing address 4th Floor, Gedung Eka Life, Kav. 62 Jalan M.T. Haryono, Jakarta 12780, Indonesia), jointly and severally, the sum of $1,875,949, plus interest in the amount of $164,601.25, for a total judgment of $2,040,550.25 based on the default of the 11⅞% guaranteed secured notes issued by Indah Kiat International Finance Company B.V. and guaranteed by P.T. Indah Kiat Pulp & Paper Corporation, due in 2002 (the "Indah Kiat 02 Notes"), and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff OCM Opportunities Fund II, L.P. (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $72,406,578, plus interest in the amount of $6,288,844.96, for a total judgment of $78,695,422.96 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund II, L.P. (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $8,875,179, plus interest in the amount of $778,734.19, for a total judgment of $9,653,913.19

based on the default of the Indah Kiat 02 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff OCM Opportunities Fund II, L.P. (address above) recover from Indah Kiat International Finance Company, B.V. (address above), P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $25,402,604, plus interest in the amount of $2,214,283.56, for a total judgment of $27,616,887.56 based on the default of the 12½% guaranteed secured notes issued by Indah Kiat International Finance Company B.V. and guaranteed by P.T. Indah Kiat Pulp & Paper Corporation, due in 2006 (the "Indah Kiat 06 Notes"), and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff OCM Opportunities Fund III, L.P. (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $52,649,728, plus interest in the amount of $4,572,871.49 for a total judgment of $57,222,599.49 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff OCM Opportunities Fund III, L.P. (address above) recover from Indah

Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $17,077,603, plus interest in the amount of $1,498,438.92 for a total judgment of $18,576,041.92 based on the default of the Indah Kiat 02 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff OCM Opportunities Fund III, L.P. (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $24,052,517, plus interest in the amount of $2,096,599.75 for a total judgment of $26,149,116.75 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff Columbia/HCA Master Retirement Trust (c/o Oaktree Capital Management, LLC, 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $2,699,817, plus interest in the amount of $234,491.54, for a total judgment of $2,934,308.54 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Columbia/HCA Master Retirement Trust (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $181,126, plus interest in the amount of $15,892.53, for a total judgment of $197,018.53 based on the default of the Indah Kiat 02 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff Columbia/HCA Master Retirement Trust (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $696,016, plus interest in the amount of $60,670.01, for a total judgment of $756,686.01 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff Gramercy Emerging Markets Fund (c/o Gramercy Advisors LLC, 20 Dayton Avenue, Greenwich, Connecticut 06830) recover from APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), and Asia Pulp & Paper Company Ltd. (address above), jointly and severally, the sum of $23,463,982, plus interest in the amount of $2,037,954.98, for a total judgment of $25,501,936.98 based on the default of the Lontar Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff Gramercy Emerging Markets Fund (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $34,670,122 plus interest in the amount of $3,042,058.07, for a total judgment of $37,712,180.07 based on the default of the Indah Kiat 02 Notes, and that the plaintiff have execution therefore; and it is further

[VACATED] ADJUDGED that plaintiff Gramercy Emerging Markets Fund (address above) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $51,577,248, plus interest in the amount of $4,495,863.97, for a total judgment of $56,073,111.97 based on the default of the Indah Kiat 06 Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiff General Electric Capital Corporation (120 Long Ridge Road, Stamford, Connecticut 06927) recover from Indah Kiat International Finance Company B.V. (address above) and P.T. Indah Kiat Pulp & Paper Corporation (address above), jointly and severally, the sum of $37,907,104 plus interest in the amount of $3,326,080.36, for a total judgment of $41,233,184.36 based on the default of the Indah Kiat 02 Notes, and that the plaintiff have execution therefore; and it is further

ADJUDGED that plaintiffs Gryphon Domestic VI, LLC (address above), OCM Opportunities Fund II, L.P. (address above), OCM Opportunities Fund III, L.P. (address above), Columbia/HCA Master Retirement Trust (address above), and Gramercy Emerging Markets Fund (address above) recover of defendants APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), Asia Pulp & Paper Company Ltd. (address above), Indah Kiat International Finance Company B.V. (address above), and P.T. Indah Kiat Pulp & Paper Corporation (address above), the costs and disbursements of this action, as computed and taxed by the clerk in the amount of $285.00; and it is further

ADJUDGED that plaintiff General Electric Capital Corporation (address above) recover of defendants APP International Finance Company, B.V. (address above), P.T. Lontar Papyrus Pulp & Paper Industry (address above), Asia Pulp & Paper Company Ltd. (address above), Indah Kiat International Finance Company B.V. (address above), and P.T. Indah Kiat Pulp & Paper Corporation (address above), the costs and disbursements of this action, as computed and taxed by the clerk in the amount of $_____.

Judgment signed this 13th day of April, 2004

/s/ Norman Goodman
Clerk

6/15/05
Recovery paragraphs marked "Vacated" are vacated pursuant to Appellate Division order dated 5/17/05 and filed 5/18/05.

NG/JMC

FILED

APR 13 2004

COUNTY CLERK'S OFFICE
NEW YORK

		Pre-Decision Interest			
Plaintiff	*Notes*	*Principal**	*Interest Rate*	*Beginning Date*	*Ending Date*
Gryphon	Lontar	$ 7,335,000	9.0%	3/11/2003	10/20/2003
Gryphon	Indah Kiat 02	$ 1,450,000	9.0%	3/11/2003	10/20/2003
OCM II	Lontar Notes	$54,845,000	9.0%	3/11/2003	10/20/2003
OCM II	Indah Kiat 02	$ 6,860,000	9.0%	3/11/2003	10/20/2003
OCM II	Indah Kiat 06	$19,380,000	9.0%	3/11/2003	10/20/2003
OCM III	Lontar	$39,880,000	9.0%	3/11/2003	10/20/2003
OCM III	Indah Kiat 02	$13,200,000	9.0%	3/11/2003	10/20/2003
OCM III	Indah Kiat 06	$18,350,000	9.0%	3/11/2003	10/20/2003
Columbia/ HCA Trust	Lontar	$ 2,045,000	9.0%	3/11/2003	10/20/2003

		Pre-Decision Interest			
Plaintiff	*Notes*	*Principal**	*Interest Rate*	*Beginning Date*	*Ending Date*
Columbia/ HCA Trust	Indah Kiat 02	$ 140,000	9.0%	3/11/2003	10/20/2003
Columbia/ HCA Trust	Indah Kiat 06	$ 531,000	9.0%	3/11/2003	10/20/2003
GEMF	Lontar	$17,773,000	9.0%	3/11/2003	10/20/2003
GEMF	Indah Kiat 02	$26,798,000	9.0%	3/11/2003	10/20/2003
GEMF	Indah Kiat 06	$39,349,000	9.0%	3/11/2003	10/20/2003
GECC	Indah Kiat 02	$29,300,000	9.0%	3/11/2003	10/20/2003

		Pre-Decision Interest	
Plaintiff	*Notes*	*Number of Days*	*Statutory Interest 3/11/03 - 10/20/03*
Gryphon	Lontar	223	$ 403,324.52
Gryphon	Indah Kiat 02	223	$ 79,730.14
OCM II	Lontar Notes	223	$ 3,015,723.70
OCM II	Indah Kiat 02	223	$ 377,026.03
OCM II	Indah Kiat 06	223	$ 1,065,634.52
OCM III	Lontar	223	$ 2,192,853.70
OCM III	Indah Kiat 02	223	$ 725,819.18
OCM III	Indah Kiat 06	223	$ 1,008,998.63
Columbia/ HCA Trust	Lontar	223	$ 112,446.99

		Pre-Decision Interest	
Plaintiff	*Notes*	*Number of Days*	*Statutory Interest 3/11/03 - 10/20/03*
Columbia/ HCA Trust	Indah Kiat 02	223	$ 7,698.08
Columbia/ HCA Trust	Indah Kiat 06	223	$ 29,197.73
GEMF	Lontar	223	$ 977,271.53
GEMF	Indah Kiat 02	223	$ 1,473,522.90
GEMF	Indah Kiat 06	223	$ 2,163,655.97
GECC	Indah Kiat 02	223	$ 1,611,098.63

		Post-Decision Interest		
Plaintiff	*Notes*	*Order Total***	*Total Claim at 10/20/03****	*Interest Rate*
Gryphon	Lontar	$ 9,683,695	$ 10,087,019.52	9.0%
Gryphon	Indah Kiat 02	$ 1,875,949	$ 1,955,679.14	9.0%
OCM II	Lontar Notes	$ 72,406,578	$ 75,422,301.70	9.0%
OCM II	Indah Kiat 02	$ 8,875,179	$ 9,252,385.03	9.0%
OCM II	Indah Kiat 06	$ 25,402,604	$ 26,468,238.52	9.0%
OCM III	Lontar	$ 52,649,728	$ 54,842,581.70	9.0%
OCM III	Indah Kiat 02	$ 17,077,603	$1 7,803,422.18	9.0%
OCM III	Indah Kiat 06	$ 24,052,517	$ 25,061,515.63	9.0%
Columbia/ HCA Trust	Lontar	$ 2,699,817	$ 2,812,263.99	9.0%

Plaintiff	*Notes*	Post-Decision Interest		
		*Order Total***	*Total Claim at 10/20/03****	*Interest Rate*
Columbia/ HCA Trust	Indah Kiat 02	$ 181,126	$ 188,824.08	9.0%
Columbia/ HCA Trust	Indah Kiat 06	$ 696,016	$ 725,213.73	9.0%
GEMF	Lontar	$ 23,463,982	$ 24,441,253.53	9.0%
GEMF	Indah Kiat 02	$ 34,670,122	$ 36,143,644.90	9.0%
GEMF	Indah Kiat 06	$ 51,577,248	$ 53,740,903.97	9.0%
GECC	Indah Kiat 02	$ 37,907,104	$ 39,518,202.63	9.0%

		Post-Decision Interest		
Plaintiff	*Notes*	*Beginning Date*	*Ending Date*	*Number of Days*
Gryphon	Lontar	10/20/2003	4/13/2004	176
Gryphon	Indah Kiat 02	10/20/2003	4/13/2004	176
OCM II	Lontar Notes	10/20/2003	4/13/2004	176
OCM II	Indah Kiat 02	10/20/2003	4/13/2004	176
OCM II	Indah Kiat 06	10/20/2003	4/13/2004	176
OCM III	Lontar	10/20/2003	4/13/2004	176
OCM III	Indah Kiat 02	10/20/2003	4/13/2004	176
OCM III	Indah Kiat 06	10/20/2003	4/13/2004	176
Columbia/ HCA Trust	Lontar	10/20/2003	4/13/2004	176
Columbia/ HCA Trust	Indah Kiat 02	10/20/2003	4/13/2004	176

		Post-Decision Interest		
Plaintiff	*Notes*	*Beginning Date*	*Ending Date*	*Number of Days*
Columbia/ HCA Trust	Indah Kiat 06	10/20/2003	4/13/2004	176
GEMF	Lontar	10/20/2003	4/13/2004	176
GEMF	Indah Kiat 02	10/20/2003	4/13/2004	176
GEMF	Indah Kiat 06	10/20/2003	4/13/2004	176
GECC	Indah Kiat 02	10/20/2003	4/13/2004	176

Plaintiff	*Notes*	Post-Decision Interest *Statutory Interest 10/20/03 – 4/13/04*	*Total Interest*
Gryphon	Lontar	$ 437,749.01	$ 841,073.53
Gryphon	Indah Kiat 02	$ 84,871.12	$ 164,601.25
OCM II	Lontar Notes	$ 3,273,121.26	$ 6,288,844.96
OCM II	Indah Kiat 02	$ 401,528.16	$ 778,734.19
OCM II	Indah Kiat 06	$ 1,148,649.04	$ 2,214,283.56
OCM III	Lontar	$ 2,380,017.79	$ 4,572,871.49
OCM III	Indah Kiat 02	$ 772,619.75	$ 1,498,438.92
OCM III	Indah Kiat 06	$ 1,087,601.12	$ 2,096,599.75
Columbia/ HCA Trust	Lontar	$ 122,004.55	$ 234,491.54

		Post-Decision Interest	
Plaintiff	*Notes*	*Statutory Interest 10/20/03 – 4/13/04*	*Total Interest*
Columbia/ HCA Trust	Indah Kiat 02	$ 8,194.45	$ 15,892.53
Columbia/ HCA Trust	Indah Kiat 06	$ 31,472.29	$ 60,670.01
GEMF	Lontar	$ 1,060,683.44	$ 2,037,954.98
GEMF	Indah Kiat 02	$ 1,568,535.17	$ 3,042,058.07
GEMF	Indah Kiat 06	$ 2,332,208.00	$ 4,495,863.97
GECC	Indah Kiat 02	$ 1,714,981.73	$ 3,326,080.36

Plaintiff	*Notes*	*New Total^*
Gryphon	Lontar	$ 10,524,768.53
Gryphon	Indah Kiat 02	$ 2,040,550.25
OCM II	Lontar Notes	$ 78,695,422.96
OCM II	Indah Kiat 02	$ 9,653,913.19
OCM II	Indah Kiat 06	$ 27,616,887.56
OCM III	Lontar	$ 57,222,599.49
OCM III	Indah Kiat 02	$ 18,576,041.92
OCM III	Indah Kiat 06	$ 26,149,116.75
Columbia/ HCA Trust	Lontar	$ 2,934,308.54

Plaintiff	*Notes*	*New Total^*
Columbia/ HCA Trust	Indah Kiat 02	$ 197,018.53
Columbia/ HCA Trust	Indah Kiat 06	$ 756,686.01
GEMF	Lontar	$ 25,501,936.98
GEMF	Indah Kiat 02	$ 37,712,180.07
GEMF	Indah Kiat 06	$ 56,073,111.97
GECC	Indah Kiat 02	$ 41,233,184.36

* This figure represents only the principal value of the notes

** This figure represents the principal plus the contract interest due up to March 11, 2003, the date of the Amended Complaint

*** This figure represents the principal plus the contract interest as of the date of the Amended Complaint, plus the statutory interest on principal only for the period 3/11/03 to 10/20/03

This figure represents the Order Total plus the statutory interest on principal only for the period 3/11/03 to 10/20/03 plus the statutory interest on that total from the date of the decision up to the date of the entry of the judgment

The "Number of Days" column is the number of days between the "Beginning Date" and the "Ending Date."

FILED
APR 13 2004
COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF NEW YORK

GRYPHON DOMESTIC VI, LLC, OCM OPPORTUNITIES FUND II, L.P., OCM, OPPORTUNITIES FUND III, L.P., COLUMBIA/HCA MASTER RETIREMENT TRUST, GRAMERCY EMERGING MARKETS FUND, and GENERAL ELECTRIC CAPITAL CORPORATION,

Plaintiffs,

-against-

APP INTERNATIONAL FINANCE COMPANY, B.V., P.T. LONTAR PAPYRUS PULP & PAPER INDUSTRY, ASIA PULP & PAPER COMPANY LTD., INDAH KIAT INTERNATIONAL FINANCE COMPANY B.V., and P.T. INDAH KIAT PULP & PAPER CORPORATION,

Defendants.

JUDGMENT

CLEARY, GOTTLIEB, STEEN & HAMILTON
ATTORNEYS FOR PLAINTIFFS

ONE LIBERTY PLAZA
BOROUGH OF MANHATTAN
NEW YORK, NY 10006
(212) 225-2000

COPY RECEIVED

THIS _____DAY OF _____20_____

_____

_____

_____

General Electric Capital Corporation

_____DEFAULT NOTED

THIS 13th DAY OF April 2004
AT 10:37 A.M.

/s/ [illegible]
CLERK

~~APR 13 2004~~

1-5
FILED AND
DOCKETED

APR 13 2004

AT 10:39 AM
N.Y. CO. CLK'S OFFICE

DOCKETED BY

/s/ [illegible]

6/15/05
Recovery paragraphs marked "Vacated" are vacated pursuant to Appellate Division order dated 5/17/05 and filed 5/18/05.

NG/JMC

APPENDIX O

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT:
Hon. HELEN E. FREEDMAN PART 39
Justice

GRYPHON DOMESTIC, VI, LLC, et al.
Plaintiff,
- v -
APP INTERNATIONAL, FINANCE COMPANY B.V., et al.
Defendant.

INDEX NO. 603315/02
MOTION DATE _____
MOTION SEQ. NO. 5
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits____	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: [ ] Yes [x] No

FILED
FEB 09 2004
NEW YORK
COUNTY CLERK'S OFFICE

Motion sequence ## 005 and 006 are consolidated for joint decision.

In this action by American investors for monies due under certain promissory notes issued and guaranteed by foreign companies, this Court has already awarded the plaintiffs summary judgment. *Dec.*, mot. seq. ## 002 & 003 (Oct. 20, 2003) (the "Decision"). In November 2003, however, the defendants commenced litigation in Indonesia, where the guarantors' collateral is located, to enjoin plaintiffs from enforcing this Court's judgment in Indonesia and to re-litigate the plaintiffs' claims against defendants *de novo*. Labeling the Indonesian actions as "brazen efforts to nullify this Court's recent ruling," the plaintiffs now move in this Court for an order preliminarily enjoining the defendants from prosecuting the Indonesian actions, and also seek leave to amend their complaint to add, among other things, a claim for a permanent injunction against the Indonesian lawsuits. In opposition, the defendants contend that they had disclosed to the plaintiffs before they invested that the Indonesian courts would not enforce the judgment of a foreign court and would determine the merits of the plaintiffs' claims *de novo*, and that the plaintiffs could not enforce their rights to the collateral without a judgment from the Indonesian courts. By choosing to invest in the foreign notes, the

defendants add, the plaintiffs assumed and accepted that disclosed risk of re-litigation.

For the reasons set forth below, the motion for a preliminary injunction is denied. Leave to amend the complaint is also denied.

Background – The plaintiffs are the beneficial owners of more than 25% of three series of notes (collectively, the "Notes"), in the total principal amount of about $250 million, which were issued in June 1994 and guaranteed by the defendants under three separate indentures (collectively, the "Indentures"): (1) the "Indah Kiat 02 Notes", due in 2002, which were issued by the defendant Indah Kiat International Finance Company B.V. ("Indah Kiat Finance"), guaranteed by the defendant Indah Kiat Pulp and Paper Corporation ("Indah Kiat Pulp & Paper"), and governed by the "Indah Kiat 02 Indenture"; (2) the "Indah Kiat 06 Notes", due in 2006, which were issued by Indah Kiat Finance, guaranteed by Indah Kiat Pulp and Paper, and governed by the "Indah Kiat 06 Indenture"; and (3) the "Lontar Notes", due in 2005, which were issued by the defendant APP International Finance Company, B.V. ("APP Finance"), guaranteed by Asia Pulp and Paper Company, Ltd. ("APP Ltd.") and P.T. Lontar Papyrus Pulp & Paper Industry ("Lontar"), and governed by the "APP Indenture." Indah Kiat Finance and APP Finance, the Notes' issuers, are Dutch corporations whose principal places of business are in the Netherlands; APP Ltd. is a Singapore company principally doing business in that county; and Lontar and Indah Kiat Pulp and Paper, are Indonesian companies with principal

places of business in Indonesia. The Notes were entirely secured by real and personal property located in Indonesia.

Each Indenture contains identical forum selection and choice of law provisions. The forum selection clauses are non-exclusive:

> [The Note issues and guarantor] hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of any New York State or United States Federal Court sitting in New York City over any suit, action or proceeding arising out of or relating to this Indenture of any Note. . . .

The choice of law provisions state that the Indentures and Notes "shall be construed in accordance with the governed by the laws of the State of New York."

Also, the prospectuses issued in connection with the Notes disclosed to prospective investors, in section called "Enforcement of Foreign Judgments in Indonesia", that any judgment they obtained in connection with the Notes from a United States court would be of limited value in a related proceeding before the Indonesian courts:

> Indonesian counsel to [the guarantor of each Note series] has advised [it] that a judgment of a foreign (non-Indonesian) court will not be enforceable by the courts of Indonesia, although such a judgment could be admissible as evidence in a proceeding on the underlying claim in an Indonesian court.

> Re-examination of the underlying claim *de novo* would be required before the Indonesian court.

After the defendants defaulted on payments due under the Notes, the plaintiffs commenced this action. In a decision dated February 4, 2003, the Court dismissed the complaint on the defendants' motion because the original named plaintiffs lacked the capacity to sue under the Indentures, but allowed the plaintiffs to re-plead. The plaintiffs served an Amended Complaint on March 11, 2003, which deleted some parties as plaintiffs and added others. Thereafter the plaintiffs moved for summary judgment; the defendants opposed primarily on the ground that the plaintiffs were not beneficial owners of the Notes and therefore still lacked capacity to sue. In its Decision, dated October 20, 2003, this Court granted summary judgment to the plaintiffs, finding that they had made an unrefuted showing that they owned the Notes, and that the defendants had failed to raise any other triable issue of fact or valid defense.

On November 13, 2003, Indah Kiat Pulp & Paper, the guarantor of the Indah Kiat 02 and 06 Notes, filed suit in the District Court of Bengkalis in Indonesia ("Indonesian Action I") in which it sought, among other things, (1) annulment of the relevant Notes their related Indentures; (2) a declaration that the plaintiffs in this action are not note-holders entitled to repayment; (3) injunctive relief and conservatory attachment that would prevent the defendants to the Indonesian Action I from enforcing or collecting on the relevant Notes or Indentures, and

(4) related damages. Later in November, Lontar commenced a lawsuit in the District Court of Kuala Tungkal ("Indonesian Action II"), in which Lontar seeks, in connection with the Lontar Notes and Indenture, very similar relief to what Indah Kiat Pulp & Paper seeks in Indonesia Action I.

Motion: preliminary injunction – A preliminary injunction cannot be granted under CPLR article 63 unless the party seeking it demonstrates that (1) it is likely to succeed on the merits, (2) it risks irreparable injury without the injunction, and (3) the equities favor it. *Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981). Turning first to the merits, movants are not entitled to a permanent injunction against the defendants' prosecution of the Indonesian Actions. The rule of comity strongly disfavors injunctions that stay ongoing proceedings before a foreign court of competent jurisdiction. *See Lazarow, Rettig & Sundel v. Castel Cap. Corp.*, 63 A.D.2d 277, 288 (1st Dept. 1978). To obtain an anti-suit injunction against a foreign proceeding, the applicant must clearly show that the proceeding "was brought in bad faith, or motivated by fraud or an intent to harass the party seeking the injunction, or if its purpose was to evade the law of the domicile of the parties." *Sarepa, S.A. v. Pepisco, Inc.*, 225 A.D.2d 604, 604 (2d Dept. 1996) (citing cases). Here, the plaintiffs claim that the defendants brought the Indonesian Actions because (1) they lost before this Court and want to re-litigate issues that this Court has already determined and (2) they want to block the plaintiffs from enforcing their judgment. But that motivation does not constitute bad faith, fraud, or harassment, because the prospectuses explicitly advised the

plaintiffs in advance that the Indonesian courts would not enforce such a judgment, and that the plaintiffs might be forced to re-litigate their claims there. Thus, under the circumstances of this case, no anti-injunction suit can issue.

In support of their claim, the plaintiffs rely heavily on *Indosuez Intl. Fin. B.V. v. Natl. Reserve Bank*, 304 A.D.2d 429 (1st Dept. 2003) ("*Indosuez*"), in which the Appellate Division upheld the grant of a permanent injunction against the defendant's pursuit of foreign litigation. The circumstances in *Indosuez* materially differ from those in this action. In *Indosuez*, the plaintiff sued to enforce a mandatory forum selection clause in the parties' currency exchange agreements that required the parties to litigate disputes connected with the agreements only in New York. The Court gave a number of reasons why the trial court's grant of a permanent injunction was appropriate: First, comity was not implicated because "there was no possibility of treading on the legitimate prerogatives of the foreign jurisdictions to which defendant had repeatedly turned," in light of the mandatory forum selection and choice of law clauses, and the Court of Appeals' ruling in the parties' earlier action that the defendant could not litigate in Russia.[1] Second, the injunction was "consonant with our policy of enforcing choice of law and forum selection clauses."

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[1] *See Indosuez Intl. Fin., B.V. v. Natl. Reserve Bank*, 98 N.Y.2d 238, 246-48 (2002).

Third, there was a judgment on the merits of the parties' underlying dispute, and the New York courts were entitled to protect it. Finally, "there was clear evidence of defendant's harassing and bad faith foreign litigation." *Indosuez*, 304 A.D.2d at 430.

The facts in *Indosuez* and in this action crucially differ. The forum selection clause in the Indentures is non-exclusive: it requires the defendants to submit to the New York courts' jurisdiction, but does not prohibit them from bringing suit in another forum. Unlike in *Indosuez*, therefore, the defendants did not breach the parties' agreement merely by suing outside of New York, and accordingly the Indonesian Actions possess a legitimacy that the foreign proceedings in *Indosuez* lacked. Moreover, the defendants' prosecution of the Indonesian Actions does not violate this State's policy of enforcing forum selection clauses, inasmuch as the clauses in question provide for non-exclusive jurisdiction. Finally, this action differs from *Indosuez* because there has been no showing that the defendant intended to harass the plaintiffs or acted in bad faith by suing in Indonesia.

Although the circumstance here and in *Indosuez* are alike in that a judgment has been granted in respect of the underlying claims, the material differences between this case and *Indosuez* render it inapposite. Accordingly, the plaintiffs cannot succeed on their claim for injunctive relief.

Moreover, the plaintiffs have not shown that they risk irreparable injury. The plaintiffs claim that they would be injured by having to engage in

"duplicative" litigation in Indonesia, but the plaintiffs knew that they could only enforce their rights to the Indonesian collateral by litigating there. Finally, the equities do not clearly favor plaintiffs, since re-litigation was a pre-disclosed risk of investment that the plaintiffs voluntarily accepted.

Amendment of pleadings – Leave to amend the complaint is denied. The plaintiffs wish to add claims for permanent injunctions and specific performance that would bar the defendants from prosecuting the Indonesian Actions, and for declarations that the Indonesian Actions are nullities. But it would be futile to let the plaintiffs amend because they are not entitled to the anti-suit injunctions they seek and the related declarations. *See Sharon Ava & Co. v. Olympic Tower Assocs.*, 259 A.D.2d 315, 316 (1st Dept. 1999) (denying leave to amend when proposed amended claims plainly lacked merit).

Extension of TRO – By a letter addressed to the Court dated February 2, 2004, the plaintiffs requested that, if this Court denied the motions at hand, it extend two temporary restraining orders currently in place, which enjoined the defendants from prosecuting the Indonesian Actions pending the issuance of this decision and order. On January 12, 2004, the defendants obtained a provisional injunction in Indonesian Action II that restrains the plaintiffs in this action from prosecuting any payment or enforcement action in connection with the Lontar Notes.

Based on the foregoing it is

ORDERED that the motion for preliminary injunctive relief and for leave to amend the complaint is denied, and it is further

ORDERED that the two temporary restraining orders currently in place shall remain until 5:00 p.m. on Monday, February 9, 2004, only

Dated: February 5, 2004 /s/ HEF
Helen E. Freedman
J.S.C.

Check one: [X] FINAL DISPOSITION
[ ] NON-FINAL DISPOSITION

FILED

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APPENDIX P

U.S. Const. art. IV, § 1

Article IV. States' relations

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15 U.S.C. § 77*ooo*

§ 77*ooo*. Duties and responsibility of the trustee

(a) Duties prior to default. The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to provide that, prior to default (as such term is defined in such indenture)--

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture; but the indenture trustee shall examine the evidence furnished to it pursuant to section 77nnn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

(b) Notice of defaults. The indenture trustee shall give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: Provided, That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking

or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

(c) Duties of the trustee in case of default. The indenture trustee shall exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Responsibility of the trustee. The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that--

(1) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee from liability for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be

proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

(e) Undertaking for costs. The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: Provided, That the provisions of this subsection shall not apply

to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security.

N.Y. C.P.L.R. § 5222

§ 5222. Restraining notice.

(a) Issuance; on whom served; form; service. A restraining notice may be issued by the clerk of the court or the attorney for the judgment creditor as officer of the court, or by the support collection unit designated by the appropriate social services district. It may be served upon any person, except the employer of a judgment debtor of obligor where the property sought to be restrained consists of wages or salary due or to become due to the judgment debtor or obligor. It shall be served personally in the same manner as a summons or by registered or certified mail, return receipt requested or if issued by the support collection unit, by regular mail, or by electronic means as set forth in subdivision (g) of this section. It shall specify all of the parties to the action, the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount then due thereon, the names of all parties in whose favor and against whom the judgment or order was entered, it shall set forth subdivision (b) and shall state that disobedience is punishable as a contempt of court, and it shall contain an original signature or copy of the original signature of the clerk of the court or attorney or the name of the support collection unit which issued it. Service of a restraining notice upon a department or agency of the state or upon an institution under its direction shall be made by serving a copy upon the head of the department, or the person designated by him or her and upon the state department of audit and control at its office in

Albany; a restraining notice served upon a state board, commission, body or agency which is not within any department of the state shall be made by serving the restraining notice upon the state department of audit and control at its office in Albany. Service at the office of a department of the state in Albany may be made by the sheriff of any county by registered or certified mail, return receipt requested, or if issued by the support collection unit, by regular mail.

(b) Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a

person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging to or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order the restraining notice is not effective as to other property or money.

N.Y. C.P.L.R. § 5225

§ 5225. Payment or delivery of property of judgment debtor.

(a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the

judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

(c) Documents to effect payment or delivery. The court may order any person to execute and deliver any document necessary to effect payment or delivery.